

# INDIAN AFFAIRS COMMITTEE

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NEW MEXICO STATE LEGISLATURE

2003

## INTERIM REPORT

*December 2003*

*New Mexico Legislative Council Service  
411 State Capitol  
Santa Fe, NM 87505*

## **INDIAN AFFAIRS COMMITTEE 2003 INTERIM SUMMARY**

The Indian Affairs Committee (IAC) explored six specific topics during the 2003 interim: health care for Native Americans; education for Native American students; natural resources and telecommunications; reorganization of the New Mexico Office of Indian Affairs (OIA) and the State Agency on Aging; authenticity of Native American arts and crafts; and proposed changes to the capital outlay process.

The IAC met for a one-day planning meeting in June. Bernie Teba, executive director, OIA, addressed the current OIA and its transition into the Indian Affairs Department (IAD) and the New Mexico Commission on Indian Affairs. Committee members also discussed the work plan and meeting schedule. Joe Lennihan, chief counsel, Taxation and Revenue Department, and Patricia Herrera, Tax Information and Policy Office, gave a presentation on state/tribal tax agreements and credits. Susanna Murphy, Ph.D., Indian Education Division, State Department of Public Education (SDE) outlined steps to facilitate reorganization in the SDE, and Ron Curry, secretary, New Mexico Department of Environment told the committee his ideas for department improvement.

In July, the IAC met for three days in Gallup to discuss education for Native American students, including the implementation of current laws and an update on problem schools. Calvin White, Ph.D., principal investigator, Navajo Nation Rural Systemic Initiative, reported on the status of the Navajo educational system. Nancy Martine-Alonzo, director of the Indian Education Unit, Albuquerque Public Schools, addressed Native American urban education issues. Dr. Murphy and Mel Morgan, Ph.D., assistant superintendent of accountability and school improvement services, SDE, discussed the key components of the Indian Education Act and the problems in information sharing between the SDE and school districts. In addition, Duane "Chili" Yazzie, president, Shiprock Center, and other Central Consolidated School District (CCSD) educators discussed their concern that the district is not meeting the needs of Navajo students. Presenters also addressed the authenticity of Native American arts and crafts, the Zuni school district's impact aid court appeal and the structure of Bureau of Indian Affairs schools.

The third day of the Gallup meeting was a joint meeting of the IAC and the Legislative Finance Committee (LFC). Representatives from the Navajo Nation, including Laurence Morgan, speaker, Navajo Nation Council, and Calvert Garcia, staff assistant to President Joe Shirley, Jr., discussed Navajo Nation priority issues, including enhancing government-to-government relations, resolving the backlog of projects needing completion and expediting the capital improvement process. Representative Patricia Lundstrom and Mr. Teba gave a presentation on how the capital outlay process works between the Navajo Nation and the state. Finally, speakers addressed the subject of improving Native American outcomes in higher education.

The IAC held its August meeting in Albuquerque to discuss health care for Native Americans in tribal communities and urban settings, including services for the elderly. Joyce Nasyowma-Chalan, division director of public health, New Mexico Department of Health, discussed the public health issues affecting New Mexicans, specifically the Native American population. Ms.

Nasyowma-Chalan was especially concerned with the high incidence of diabetes in Native Americans. Dr. John Trotter, vice dean, University of New Mexico School of Medicine, and Dr. Mike Trujillo, University of New Mexico Hospital physician and the former head of Indian Health Services, then discussed the closing of the Southwest Diabetes Prevention Center in Gallup. Committee members expressed concern that Gallup residents were now without a diabetes education facility. Norman Ration, director, Indian Youth Council, and Donna Christensen, president, board of directors, First Nations Community Healthsource, spoke about health issues facing Albuquerque's 33,000 urban Indians. According to the presenters, substance abuse, diabetes and liver disease are the top health concerns of urban Indians. Committee members also received project updates from the University of New Mexico Cancer Research and Treatment Center, the Navajo Nation Behavioral Health Office in Shiprock, the Jicarilla Health Clinic, the Center for Native American Health Care, the New Mexico Tribal Healthcare Alliance, and the Rehoboth McKinley Christian Health Care Services Zuni Dialysis Center. Michelle Lujan-Grisham, secretary designate, Aging and Long-Term Care Department, discussed barriers, including language and poor roads, that keep Native American elders from receiving necessary services. Finally, Frank J. Dayish, Jr., vice president, Navajo Nation, asked committee members to take Navajo Nation homeland security and West Nile virus prevention plan concerns seriously.

In September the IAC traveled to Farmington for a three-day meeting to discuss natural resources and telecommunications issues, including the Navajo Nation water settlement and environmental issues in Indian country. Marcelino Gomez, assistant attorney general, Department of Justice, Office of the Navajo Tax Commission, testified about the Navajo Nation tax credit on coal severed from Navajo lands, and Ed Pettigrew, manager of business development, BHP Billiton, presented information about the availability of coal in the San Juan basin. John D'Antonio, PE, State Engineer, and secretary of the Interstate Stream Commission updated the committee on laws protecting endangered species in New Mexico rivers. John Leeper, director, Navajo Nation Department of Water Resources, Water Management Branch, discussed the Navajo/Gallup water supply project and San Juan River and Navajo Dam shortages. John Badal, vice president for New Mexico Policy and Law, Qwest Corporation, and Calvert Garcia, staff assistant to President Shirley, Navajo Nation, gave an overview of the memorandum of agreement among Qwest Corporation, The Navajo Nation and The Bureau of Indian Affairs to provide phone service to certain Navajo chapters. Dr. Scott Bender, veterinarian and special program coordinator, Navajo Nation, presented the Navajo Nation's plan for halting a potential outbreak of West Nile virus, and Arlen Quetawki, Sr., governor, Pueblo of Zuni, discussed Zuni's victory against the Salt River Project.

Hoskie Benally, Jr., CCSD, paid the committee a surprise visit at its September meeting and updated members on the situation at CCSD. Mr. Benally reported that CCSD is still discriminating against bilingual teachers and asked the committee to intervene. In response to this request, Senator Tsosie requested that the Legislative Council approve a subcommittee meeting in Shiprock where members could hear all sides of the dispute. The Legislative Council approved the meeting, and the subcommittee meeting was held on October 23 in Shiprock.

The October meeting was a "followup" meeting, and the committee heard updates on elderly health care issues and IAD reorganization. In addition, Stuart Bluestone, chief deputy attorney general, Office of the Attorney General (AG), and Stephan Farris, director of the Water, Environment and Utilities Division, AG, explained the *Aamodt* settlement, which contemplates a regional water supply, and Maxine Velasquez, attorney, Stetson Law Office, explained the gaming compacts.

On October 23, the IAC held its subcommittee meeting at Tse Bitai Middle School in Shiprock to hear community concerns regarding changes in bilingual programming in CCSD. Linda Besett, Ph.D., superintendent, CCSD, Larry Tsosie, Indian education coordinator, CCSD, Jay Mortenson, assistant superintendent of elementary education, CCSD, and Dennis Nicholson, assistant superintendent of secondary education, presented on behalf of the school district. They explained the differences in Title VII, Johnson O'Malley and Title VIII funding programs. Community members were then given the opportunity to express their concerns, which ranged from the disbanding of the Indian Education Committee (IEC) to discriminatory hiring practices to changes in bilingual education. Senator Tsosie urged Superintendent Besett and community members to talk through their issues before the next IAC meeting and to update the committee on their conversation at the meeting.

The November meeting focused on capital outlay requests and committee-endorsed legislation as well as further discussion about bilingual education and the situation in CCSD. Superintendent Besett, Randy Manning, president CCSD School Board, and Stanley King, secretary, CCSD School Board, updated the committee about a mediation on November 17 in Shiprock, where Justice Joseph Black served as mediator. After five hours of discussion, both groups agreed that CCSD will reinstate the IEC, which will develop a long-range bilingual education plan and collaborate with CCSD in drafting new IEC bylaws. Unresolved issues still exist, including sovereignty issues, conflicts between federal, state and Navajo Nation laws and conflicts between state and Navajo Nation culture.

At the November meeting, Representative Lundstrom informed the committee that the LFC and the New Mexico Finance Authority Oversight Committee were also discussing changes to the procedures for allocating and expending capital outlay appropriations. She requested that the IAC ask the Legislative Council to approve an additional meeting day for the three committees to coordinate and jointly work for changes to the capital outlay process. The Legislative Council approved the request for a meeting, which permitted the attendance of the three committees. The additional meeting was held on December 15 at the State Capitol.

The Indian Affairs, Legislative Finance and New Mexico Finance Authority Oversight committees met jointly on December 15 to discuss the Governor's Finance Council's proposed changes for allocating capital outlay appropriations. According to James Jimenez, secretary, Department of Finance and Administration, and David Harris, executive director, New Mexico Finance Authority, both of whom are members of the Governor's Finance Council, the governor is concerned with spending state funds on small projects that are underfunded and never completed. In addition, Mark Maryboy, chairperson, Transportation and Community

Development Committee, Navajo Nation Council, was concerned that projects in the Navajo Nation were inadequately funded. The legislators agreed to discuss the governor's proposed changes in their respective caucuses.

**INDIAN AFFAIRS COMMITTEE  
2003 INTERIM  
APPROVED WORK PLAN**

**Membership**

Rep. James Roger Madalena, Co-chair  
Sen. Leonard Tsosie, Co-chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Rep. Irvin Harrison  
Sen. Raymond Kysar

Sen. John Pinto  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Rep. Avon W. Wilson  
Rep. Teresa A. Zanetti

**Advisory Members**

Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Rep. Fred Luna  
Rep. Patricia A. Lundstrom  
Sen. Richard C. Martinez

Rep. Debbie A. Rodella  
Rep. Nick L. Salazar  
Sen. William E. Sharer  
Rep. James G. Taylor  
Rep. W.C. "Dub" Williams

**I. WORK PLAN**

The Indian Affairs Committee has existed since 1989 as a result of post-session Legislative Council action each year.

A. The Indian Affairs Committee will explore and discuss the following topics during the 2003 interim:

1. health care for Native Americans in tribal communities and urban settings, including services for the elderly;
2. education for Native American students, including the implementation of current laws and an update on problem schools;
3. natural resources and telecommunications, including the Navajo Nation water settlement and environmental issues in Indian country;
4. reorganization of New Mexico Office of Indian Affairs and State Agency on Aging, including reviewing their performance measures; and
5. authenticity of Native American arts and crafts, including economic impact and enforcement.

B. The committee will coordinate, as needed, with other committees regarding presentations of subject matter of common concern.

**II. MEETING SCHEDULE AND BUDGET**

<u>DATE</u>	<u>LOCATION</u>	<u>BUDGET</u>
June 19	Santa Fe	\$2,855.00
July 14-16	Gallup	5,863.56
August 13-15	Albuquerque	5,840.52
September 15-17	Farmington	6,040.68
October 8-10	Santa Fe	6,045.00
November 19-21	Santa Fe	6,045.00

**TOTAL BUDGET APPROVED**

**\$25,000.00\***

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\*The above total does not reflect the budget required for advisory members of \$39,004.24 paid from a different fund.

**Revised: June 18, 2003**

**TENTATIVE AGENDA**  
**for the**  
**INDIAN AFFAIRS COMMITTEE**

**June 19, 2003**  
**Room 321, State Capitol**

**Thursday, June 19**

- |            |   |
|------------|---|
| 10:00 a.m. | CALL TO ORDER   |
| 10:05 a.m. | NEW MEXICO NATIONAL GUARD INFORMATION<br>—Brigadier General Kenny Montoya, New Mexico National Guard  |
| 10:30 a.m. | NEW MEXICO OFFICE OF INDIAN AFFAIRS — UPDATE<br>—Bernie Teba, Executive Director, New Mexico Office of Indian Affairs   |
| 11:50 a.m. | WORK PLAN AND MEETING SCHEDULE DEVELOPMENT<br>—Pam Ray, Staff Attorney, Legislative Council Service (LCS)<br>—Leslie Schaar, Staff Attorney, LCS                        |
| 12:15 p.m. | BLUE RIBBON TAX REFORM COMMISSION<br>—Pam Ray, Staff Attorney, LCS  |
| 12:30 p.m. | LUNCH   |
| 1:30 p.m.  | INDIAN EDUCATION ACT — UPDATE<br>—Donna Pino-Martinez, Indian Education Advisory Council member<br>(representing State Department of Public Education/Indian Education) |
| 2:30 p.m.  | INTERGOVERNMENTAL TAX AGREEMENTS<br>—Joe Lennihan, Chief Counsel, Taxation and Revenue Department   |
| 3:30 p.m.  | NEW MEXICO DEPARTMENT OF ENVIRONMENT — OUTREACH<br>—Ron Curry, Secretary of Environment, New Mexico Department of<br>Environment  |
| 4:00 p.m.  | ADJOURNMENT   |



# MINUTES

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## INDIAN AFFAIRS COMMITTEE

### First Meeting

June 19, 2003

Room 321, State Capitol

The first meeting of the Indian Affairs Committee (IAC) for the 2003 interim was called to order by Senator Leonard Tsosie, co-chair, on June 19, 2003 at 10:05 a.m. in Room 321, State Capitol.

#### **PRESENT**

Rep. James Roger Madalena, Co-chair

Sen. Leonard Tsosie, Co-chair

Sen. Rod Adair

Rep. Irvin Harrison

Sen. John Pinto

Sen. Lidio G. Rainaldi

Rep. Avon W. Wilson

Rep. Teresa A. Zanetti

#### **ABSENT**

Rep. Ray Begaye

Sen. Raymond Kysar

Sen. Nancy Rodriguez

#### **Advisory Members**

Sen. Joseph J. Carraro

Rep. Ben Lujan

Rep. Fred Luna

Rep. Patricia A. Lundstrom

Rep. James G. Taylor

Sen. Richard C. Martinez

Rep. Debbie A. Rodella

Rep. Nick L. Salazar

Sen. William E. Sharer

Rep. W.C. "Dub" Williams

#### **Staff**

Leslie Schaar

Pamela Ray

Pamela Jensen

#### **Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Thursday, June 19**

## **NEW MEXICO NATIONAL GUARD**

Brigadier General Kenny Montoya, New Mexico National Guard, discussed the future of the guard in New Mexico and the nation. The general, formerly of the United States Marine Corps, has a background in air defense, attended New Mexico State University, earned a law degree, has 22 years of military service and is JAG qualified. He described the guard as having 33 armies in 33 communities in New Mexico. Native Americans comprise five to 10 percent of the guard with one Native American being a field grade officer.

Statewide plans for growth and development include:

- creation of an engineer battalion to help build better roads and community water wells
- community involvement programs;
- youth challenge programs;
- combat life saver support programs and training;
- airmen war training centers, including helicopter training and civil authority support;
- environmental restoration of any areas used for guard exercises;
- veteran activities;
- increasing the number of Native Americans and women in the guard; and
- promotion of pride in the guard.

The general described a shift from air defense to ground defense, homeland security and emergency support. Plans for specific areas include:

- Gallup — set up a headquarters for transportation services; build up unit to 100 soldiers; build leadership and establish mentorship programs;
- Farmington — increase number of soldiers from 88 to 150;
- Grants — establish a military police unit with 40 soldiers;
- Socorro — establish a military police unit;
- Raton and Clayton — shift focus from air defense to enlisting more female guards;
- Carlsbad and Artesia — transportation services; and
- Las Cruces, Truth or Consequences and Silver City — recruit soldiers and build up guard.

General Montoya explained that there are 150 New Mexico National Guard soldiers serving in Iraq. They are deployed in extremely dangerous areas, delivering medical supplies and services, providing maintenance equipment and helping to build the nation. Approximately 100 New Mexico Air National Guard members are deployed around the world.

## ! Committee Requests

Committee members made requests for:

- New Mexico National Guard member list, including where members are deployed and their hometowns;
- year-end data on how many guard members lose their civilian jobs as a result of guard duty;
- base closing information;
- report on programs developed and used to recruit Native American soldiers; and
- information on recognition and honoring of Native American soldiers and their service to this country.

Representative Madalena, co-chair, welcomed guests to the meeting, and the legislators and staff introduced themselves.

## **NEW MEXICO OFFICE OF INDIAN AFFAIRS**

Bernie Teba, executive director, New Mexico Office of Indian Affairs (OIA), discussed the current OIA and its transition into the Indian Affairs Department (IAD) and the New Mexico Commission on Indian Affairs. Mr. Teba is one of two Native Americans appointed by Governor Richardson to cabinet-level positions. Conroy Chino has been appointed as Secretary of Labor.

Prior to working with the OIA, Mr. Teba was chief executive officer for the Eight Northern Indian Pueblos Council, worked for 13 years at the Santa Fe Indian School and worked with tribes in the state and nationally. His mother is from the Pueblo of Santa Clara, and his father is from Ft. Defiance, Arizona, of the Edge Water Clan. Mr. Teba is enrolled as a member of the Navajo Nation. At Santa Clara, he is a member of the Summer Kiva and of the Badger Clan. He also has relatives at the Pueblo of Jemez.

Mr. Teba explained that Governor Richardson and the OIA are committed to working on the concerns of the 22 tribes in New Mexico, and the governor has signed a government-to-government agreement with the 19 pueblos. Agreements with the Jicarilla Apache Nation, the Mescalero Apache Tribe and the Navajo Nation are in process. Also, each department of the state government has been requested to establish an Indian affairs liaison.

## New Mexico Commission on Indian Affairs

The New Mexico Commission on Indian Affairs has 10 members. The new members appointed by the governor are:

- Tom Talache, Pueblo of Nambe, chairman;
- Tomas Todacheene, vice chairman;
- Hazel Dayish, Navajo Nation;
- Wilson Ray, Navajo Nation;
- Ray Gauchupin, pueblo representative;

- Lawrence Lucero, pueblo representative;
- Freddie Peso, Mescalero Apache;
- Lynn Roanhorse, Jicarilla Apache; and
- two non-Indian members, Leroy Gabaldon and Norman Asad.

By statute, the commission must meet at least quarterly and is currently meeting monthly. One of its primary functions is to investigate and study Native American conditions and issues in New Mexico, including education, health, employment, access to basic services and transportation needs and government-to-government concerns at both local and state levels.

### Projects

- Zuni Dialysis Center funding support
- Domestic violence services for Native Americans funding support
- Four Corners Monument funding
- Capital outlay projects

### New Mexico Office of Indian Affairs/Indian Affairs Department

The OIA has a staff of 10. It has an operating budget of \$670,000 and a total budget of \$21 million. Overhead is three percent of the overall budget. Capital outlay projects total \$19 million. The OIA administers 14 projects currently and all award letters have been issued for these projects. Mr. Teba described the structure of the new IAD.

Goals and objectives include:

- streamlining capital outlay process to get projects started and completed;
- reviewing emergency management and response capabilities of the tribes and establishing emergency preparedness plans;
- coordinating funding of the 22 tribes' homeland security needs;
- hiring a chief financial officer; and
- planning for transition from office to department, including developing a one-year action plan and a five-year strategic plan.

Other projects include:

- creating state-tribal consultation models;
- creating a resource directory of what is available at the state level for Native Americans;
- strengthening and coordinating interagency relations;
- strengthening homeland security;
- studying health services needs and provision of services;
- studying water issues, including development of comprehensive water plan, water trust board infrastructure funding, New Mexico Finance Authority infrastructure funding, drought task force and provision of basic services;
- studying veterans' needs and provision of services;

- installation of statue of Pope;
- studying repatriation issues;
- studying corrections issues, including parole and probation;
- participating in the Economic Development and Tourism Summit;
- working with the Office of the State Medical Investigator;
- studying tax issues; and
- studying tribal sovereignty issues.

Other staff members include: Lynn Trujillo, general counsel; Sam Cata, deputy; Caroline Jean; Diane Montoya; and Angela Pacheco Chavez.

### **! Committee Requests**

Committee members requested that:

- state statistical data be electronically transferred to the Navajo Nation to aid in its certification process;
- Mr. Teba provide the committee with:
  - S a *Capital Outlay Status Report*;
  - S a *Federal Highway Dollars Use on Reservation Lands Report*; and
  - S a brief on local, state and national Indian issues; and
- IAD staff attend IAC meetings.

### **Suggested Topics for Further Study**

Topics included:

- bridging partnerships between natives and nonnatives;
- a conference on racism;
- how to move capital outlay to local governance;
- ways for the state to deal directly with the chapters;
- determining overlaps between the department and the commission;
- right-of-way issues and the provision of communications;
- prioritizing provision of basic services;
- ways to deal with state-tribal-federal issues; and
- improving roads on tribal land for school bus routes.

Senator Tsosie thanked Mr. Teba for his presentation.

### **WORK PLAN AND MEETING SCHEDULE**

Committee members discussed the work plan and meeting schedule. (A copy of the handout is in the meeting file.) Further topics for consideration included:

- authenticity issues with Native American arts and crafts;
- an update on the Four Corners Monument;
- an update on the Navajo Nation water rights settlement;

- inviting city councilors to meetings; and
- the dialysis service in Gallup being moved to Albuquerque.

Senator Adair moved to adopt the work plan and schedule as it was written. The motion was seconded by Senator Carraro and the work plan and schedule was adopted. (A copy of the work plan and schedule is in the meeting folder.) The meeting recessed for lunch and resumed at 1:50 p.m.

## **INDIAN EDUCATION**

### Government-to-Government Meeting Update

Donna Pino-Martinez, Indian Education Advisory Council member, gave a presentation on the council's meetings. The main topics of discussion were:

- academic achievement and success among Native American students;
- teacher quality and training;
- instructional materials and curriculum, including development of materials in Athapascan, Keresan, Tanoan and Zunian;
- governance issues;
- establishment of a Northwest Indian Education Office;
- the *Indian Education Status Report*;
- Indian education and higher education funding; and
- proposed Indian Education Act budget.

Dr. Susanna Murphy, Indian Education Division, State Department of Public Education (SDE), continued the discussion of Indian education. She is responsible for oversight of the reorganization that is occurring throughout the department to improve student achievement and performance. She outlined the following steps to facilitate reorganization and improvement:

- gathering pertinent data to make informed decisions;
- verifying teacher information, including how many teachers are Native American;
- training educational assistants to become teachers;
- identifying nonnative teachers who are teaching Native American students and training these teachers in Native American culture and teaching modalities;
- expanding the Indian Education Advisory Council membership;
- hiring an assistant superintendent of Indian education;
- integration of all divisions within the SDE to facilitate corrective action and school and student performance;
- developing and issuing the Native American language and culture license;
- creation of a criterion-referenced test and making the transition from the norm-referenced test;
- seeking local business involvement with school improvement projects;
- developing and implementing a public relations campaign to explain the accountability system and requirements of the Indian Education Act;
- implementing the provisions of the federal No Child Left Behind Act of 2001; and

- implementing the provisions of the Indian Education Act.

#### **! Committee Requests**

Committee members requested that:

- Dr. Murphy and IAC staff develop a summary of Indian education issues; and
- Dr. Murphy and IAC staff create a brief history and status of impact aid, including issues related to it.

### **INTERGOVERNMENTAL TAX AGREEMENTS**

Joe Lennihan, chief counsel, Taxation and Revenue Department, and Patricia Herrera, Tax Information and Policy Office, gave a presentation on state/tribal tax agreements and credits. (A handout is in the meeting file.) The discussion focused on:

- gross receipts tax rates per municipalities and counties, including pueblos whose boundaries fall within several different location codes;
- cooperative tax agreements;
- credit against gross receipts for taxes paid to pueblo or tribe;
- joint powers agreements with pueblos and tribes;
- gasoline tax-sharing agreements;
- corporate income tax business tax credits; and
- oil and gas production credits.

Ms. Herrera discussed various reports available to the public and a timetable for gross receipts taxes. (Handouts are in the meeting file.)

#### **! Committee Requests**

Committee members requested that:

- Joe Lennihan enlarge the list of state/tribal tax agreements and credits for the committee;
- TRD investigate giving a new code to authenticate Indian arts and crafts, including jewelry, to facilitate tracking the effect of these sales on state economy and taxes;
- IAC staff distribute the work plans of the Blue Ribbon Tax Reform Commission subcommittees to the IAC; and
- there be further discussion on tracking the economic impact of sales of Indian arts and crafts, enforcing current law regarding these sales and changing the tax code classification of Indian arts and crafts and jewelry.

### **NEW MEXICO DEPARTMENT OF ENVIRONMENT**

Ron Curry, secretary of environment, New Mexico Department of Environment, gave a presentation on the department. (Handout is in the meeting file.) He outlined his strategies for improving the department, which included:

- better management of the department budget;
- improving communication between the bureaus and the secretary;
- improving management of the office of general counsel;
- improving enforcement component, including enforcing regulations consistently and on a timely basis;
- improving administrative support;
- emphasizing pollution prevention; and
- emphasizing environmental justice.

Secretary Curry discussed the issues related to hazardous spills and similar emergencies on tribal lands. He stated that the process involved recognizing and respecting tribal sovereignty, doing the cleanup, then dealing with the costs of cleanup. It is very difficult to work in "checkerboard" areas of the state because of state, tribal and federal jurisdiction issues. He clarified that the New Mexico state police are the first responders to these types of emergencies. He further explained that pipeline safety is under the jurisdiction of the Energy, Minerals and Natural Resources Department. He encouraged the committee to take a close look at the poor conditions of much of the pipeline in New Mexico. He added that the recycling program in New Mexico has been ignored and that it must be restarted statewide and in state government. Secretary Curry also said that the concept of a bottle bill was a good one and that he would need to see the specifics of the bill before offering his support.

#### Suggested Topics for Further Study

Topics included:

- the pipeline situation, including conditions and regulations; and
- environmental hazards in Indian country.

Representative Madalena and Senator Tsosie thanked Secretary Curry for his presentation. The meeting adjourned at 4:20 p.m.



**Revised: July 11, 2003**

**TENTATIVE AGENDA**  
**for the**  
**SECOND MEETING**  
**of the**  
**INDIAN AFFAIRS COMMITTEE**

**July 14-15, 2003**  
**Gallup Chamber of Commerce**

**July 16, 2003**  
**University of New Mexico - Gallup**  
**Gurley Hall Basement, Room 205-207**  
**Joint Meeting with LFC**

**Monday, July 14 — Gallup Chamber of Commerce**

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|------------|---|
| 10:00 a.m. | CALL TO ORDER   |
| 10:15 a.m. | NAVAJO NATION EDUCATION SYSTEM — UPDATE<br>—Kalvin White, Ph.D., Principal Investigator for Navajo Nation   |
| 11:15 a.m. | NATIVE AMERICAN URBAN EDUCATION ISSUES<br>—Nancy Martine-Alonzo, Indian Education Director, Albuquerque Public Schools  |
| 12:15 p.m. | LUNCH   |
| 1:30 p.m.  | INDIAN EDUCATION ACT — UPDATE<br>—Susanna Murphy, Ph.D., Deputy State Superintendent, State Department of Public Education (SDE)  |
| 3:00 p.m.  | EDUCATION OF NATIVE AMERICAN STUDENTS — IMPROVEMENT AND ACCOUNTABILITY<br>—Susanna Murphy, Ph.D., Deputy State Superintendent, SDE<br>—Mel Morgan, Ph.D., Assistant Superintendent of Accountability and School Improvement Services, SDE |
| 4:00 p.m.  | CENTRAL CONSOLIDATED SCHOOL DISTRICT ISSUES<br>—Duane 'Chili' Yazzie, President, Shiprock Chapter<br>—Glojean Todacheene, Central Consolidated Schools  |

4:30 p.m. RECESS

**Tuesday, July 15 — Gallup Chamber of Commerce**

10:00 a.m. AUTHENTICITY OF NATIVE AMERICAN ARTS AND CRAFTS  
—Lisa Rodriguez, President, Gallup Chamber of Commerce  
—Bill Richardson, Owner, Richardson Trading

11:00 a.m. IMPACT AID — HISTORY AND UPDATE  
—George Kozeliski, Attorney, Gallup City Attorney's Office

12:00 noon LUNCH

1:15 p.m. IMPACT AID — HISTORY AND UPDATE  
—Arlene Strumor, Deputy General Counsel, SDE  
—Steve Burrell, Director, School Budget and Financial Analysis Unit, SDE

2:45 p.m. BUREAU OF INDIAN AFFAIRS SCHOOLS — OVERVIEW  
—Lester Hudson, Education Line Officer, Bureau of Indian Affairs

4:00 p.m. RECESS

**Wednesday, July 16 — University of New Mexico - Gallup — Gurley Hall Basement,  
Room 205-207**

9:00 a.m. INTRODUCTION/WELCOMING REMARKS  
—Senator Ben D. Altamirano, Chairman, LFC  
—Dr. Beth Miller, Executive Director, University of New Mexico (UNM)-Gallup  
—Mayor Bob Rosebrough  
—Area Legislators

9:30 a.m. NAVAJO NATION PRIORITY ISSUES  
—Lawrence Morgan, Speaker, Navajo Nation Council  
—Calvert Garcia, Staff Assistant to President Shirley

12:00 noon LUNCH

1:00 p.m. INDIAN AFFAIRS DEPARTMENT STRATEGIC PLAN AND FINANCIAL  
ISSUES  
—Bernie Teba, Secretary, Indian Affairs Department

2:00 p.m. CAPITAL OUTLAY, APPROPRIATIONS AND PROCESS FOR NATIVE

AMERICAN PROJECTS

—Representative Patricia A. Lundstrom

—Bernie Teba, Secretary, Indian Affairs Department

- 3:00 p.m. COMMISSION ON HIGHER EDUCATION — IMPROVING NATIVE  
AMERICAN OUTCOMES
- Miguel Hidalgo, Acting Executive Director, Commission on Higher  
Education
  - Dr. Beth Miller, Executive Director, UNM-Gallup
  - Dr. Mary Jiron Belgarde, Assistant Professor, College of Education, University  
of New Mexico
  - Dr. Donald Pepion, Director, American Indian Program, New Mexico State  
University
  - Comments from Institutions: UNM-Gallup, NMSU-Grants, San Juan College,  
UNM-Taos, Santa Fe Community College, UNM-Albuquerque, New  
Mexico Highlands Universtiy

- 5:30 p.m. ADJOURN

# MINUTES

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## INDIAN AFFAIRS COMMITTEE

### Second Meeting

July 14-15, 2003

Gallup Chamber of Commerce, Code Talkers Room

July 16, 2003

University of New Mexico - Gallup, Gurley Hall Room 205-207

The second meeting of the Indian Affairs Committee for the 2003 interim was called to order by Senator Leonard Tsosie, co-chair, on July 14, 2003 at 10:20 a.m. in the Navajo Code Talkers Room of the Gallup Chamber of Commerce. Representative James Roger Madalena, co-chair, asked Senator Lidio G. Rainaldi to act as co-chair of the Gallup meeting.

#### **PRESENT**

Rep. James Roger Madalena, Co-chair

Sen. Leonard Tsosie, Co-chair

Sen. Rod Adair (7/14)

Rep. Ray Begaye (7/15-16)

Rep. Irvin Harrison

Sen. John Pinto

Sen. Lidio G. Rainaldi

Sen. Nancy Rodriguez (7/14-15)

Rep. Avon W. Wilson

Rep. Teresa A. Zanetti

#### **ABSENT**

Sen. Raymond Kysar

#### **Advisory Members**

Rep. Ben Lujan (7/16)

Rep. Fred Luna (7/15)

Rep. Patricia A. Lundstrom (7/16)

Sen. Joseph J. Carraro

Sen. Richard C. Martinez

Rep. Debbie A. Rodella

Rep. Nick L. Salazar

Sen. William E. Sharer

Rep. James G. Taylor

Rep. W.C. "Dub" Williams

(Attendance dates are noted for members not present for the entire meeting.)

#### **Staff**

Leslie Schaar

Pamela Ray

Pamela Jensen

#### **Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

### **Monday, July 14 — Gallup Chamber of Commerce**

#### **NAVAJO NATION EDUCATION SYSTEM**

##### **Navajo Nation Rural Systemic Initiative**

Kalvin White, Ph.D., principal investigator, Navajo Nation Rural Systemic Initiative (NN-RSI), presented a report on the NN-RSI and the status of the Navajo educational system. The Navajo Nation has received an award of \$10 million from the National Science Foundation (NSF). The Navajo Nation is the first Indian nation to receive the NSF award. The award will be issued as \$2 million a year for five years and will benefit Navajo students, teachers, schools, parents and communities.

The focus of the NN-RSI is:

- curriculum alignment;
- policy development;
- resource convergence;
- broad-based support;
- student achievement; and
- closing the gap.

The objectives of the NN-RSI are to:

- create a standards-based curriculum aligned with Navajo cultural infusion;
- establish the Navajo education information system;
- close the achievement gap; and
- sustain educational reform within the Navajo Nation.

Questions to be answered by the initiative include:

- What is the Navajo student academic achievement level?
- How do Navajo Nation schools compare to non-Navajo Nation schools?
- How do Navajo Nation schools compare to one another?
- What is the effect of Navajo culture and language on student achievement?

Dr. White provided handouts that included statistics and graphs. (Copies of the handouts are in the meeting file.) The issue of privacy and confidentiality has been a stumbling block to information-sharing among the Navajo Nation, the State Department of Public Education (SDE) and the Bureau of Indian Affairs (BIA). An agreement to guarantee these rights is in process. This information is necessary to study Navajo student achievement and needs.

Dr. White discussed factors that affect student achievement. These factors include place-based information, which includes language spoken by both students and teachers and cultural attitudes and impact; parental involvement; school policies; and teacher and student transition. There is a high turnover of teachers on the Navajo Nation. The primary reasons for this turnover are isolation of teachers who teach at schools in remote areas of the nation and conflicts between teachers and leaders of the schools. Salary levels did not appear to be the major factor in teacher turnover. Dr. White stated that further study should be done to assess why Native American teachers leave the system. There is also considerable migration of Navajo, as well as all other Native American, students between schools. This is further compounded by migration between Navajo Nation schools, BIA schools, contract or grant schools and public schools. When a student leaves a school and enters another school, he or she is often listed as a dropout. Dr. White stressed the importance of the assignment of student identification numbers, so that a student may be tracked from school to school to accurately reflect dropout and retention rates and academic achievement.

A key factor that is needed for educational reform is to train teachers to match curriculum to standards. The NN-RSI showed that student test scores improved when their teachers received the NN-RSI training and used the curriculum in their classrooms. Dr. White stressed the need for the training and the need for an accountability system that will ensure that the training is implemented in the classroom. The NN-RSI includes the following outcomes:

- NN-RSI training helps schools;
- the academic achievement gap is closing in NN-RSI schools;
- data drives the curriculum;
- achievement levels of Navajo students are quantitatively defined (by using information collected by the NN-RSI); and
- schools with strong leadership have improved test scores.

## **NATIVE AMERICAN URBAN EDUCATION ISSUES**

Nancy Martine-Alonzo, director of the Indian Education Unit, Albuquerque Public Schools (APS), made a presentation on Native American urban education issues. APS is the 24th largest school district in the United States. Total student enrollment for the 2002-2003 school year is 84,337 students. Native American students make up 4.7 percent of the total enrollment.

The Indian Education Unit is placed under the chief superintendent on the APS organizational chart and its mission statement reads: *We are committed to enhancing and supporting educational opportunities while respecting language and cultural perspectives so that students can achieve personal and academic success by working together with the school and community.* The Indian Education Parent Committee consists of seven members who provide input and guidance and are involved in the planning and monitoring of programs. The committee meets on a monthly basis.

The Indian Education Unit is supported by four sources of funds, including APS

operational dollars and three federal supplemental programs. The programs are the Johnson O'Malley (JOM) program, Title 8 impact aid and the Title 7 Indian education formula grant. Ms. Martine-Alonzo provided an in-depth discussion of the different funding sources. (See handout in the meeting file.) She noted that the JOM program funds have been frozen at the 1995 level, and while Title 7 funds have risen, JOM funds have declined. She stressed that the JOM funds are the only source that supports native language and culture curriculum and instruction.

The purpose of Title 7 grants is to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students. The Title 7 program operates a culturally based literacy program. Title 7 grant funds are part of the No Child Left Behind Act of 2001 (NCLB) and require accountability, data reporting and annual performance components.

Title 8 impact aid funds are federal funds provided to assist in the provision of educational services to federally connected children. To ensure that Native American parents and tribes are involved in education programs and services funded by impact aid, local education agencies (LEAs) are required to obtain signatures of Indian tribes on their applications for Title 8 funds and to review the Indian Policies and Procedures (IPP). The APS impact aid application requires the signatures of the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Pojoaque, San Felipe, Santa Ana, Santo Domingo, Sandia, Zia and Zuni, the Jicarilla Apache Nation and the Navajo Nation. The largest tribe represented is the Navajo Nation, with approximately 250 students bussed in from Tohajilee.

Ms. Martine-Alonzo discussed the certificate of Indian blood (CIB) and the 506 form. These are both used to establish ethnicity for eligibility requirements. APS must be able to prove ethnicity of students to receive federal funding. Ms. Martine-Alonzo said that she has worked to help parents obtain the proper documentation so that their children may be eligible for benefits. Schools that do not provide such assistance lose student eligibility and, therefore, federal funding. Her studies have shown that Native American students are not taking advanced courses and, therefore, are not being prepared to pursue higher education.

Norman Ration, director, National Indian Youth Council, spoke further on issues facing New Mexico urban Indians, most of whom live in Albuquerque. He stated that a study showed that only seven percent of Native American students at the University of New Mexico graduated and that, on average, it took eight years for a student to graduate. Mr. Ration said the Indian Education Act (IEA) would greatly contribute to improving Indian education and thanked committee members for their passage of the act. He discussed the migration of Indians from rural areas to urban areas, stating the main reason was employment. Issues faced by urban Native Americans that need to be addressed include:

- lack of job experience;
- inadequate education;
- lack of representation;
- lack of support systems;

- high suicide rates;
- health issues such as substance abuse and sexually transmitted diseases; and
- housing.

Following lunch, Bill Nechero, councilman, welcomed the committee to Gallup on behalf of the mayor and the city council.

## **INDIAN EDUCATION ACT**

Susanna Murphy, Ph.D., deputy state superintendent, SDE, discussed the IEA. She stated that the act has three key components: governance, teacher and principal quality and parental and tribal involvement. Under the governance component, the Indian Education Advisory Committee will be expanded from seven to 14 members, and the Division of Indian Education Services will be created and a northwest regional office established.

Under the teacher and principal quality component, scholarships will be given to increase the number of Native American teachers and principals and to increase the number of Native American teachers with endorsements in special education, reading and bilingual studies. The SDE, in conjunction with the higher education institutions, will develop preservice programs for Native American post-secondary and educational assistants and will provide professional development for all teachers serving Native American students. A sustainable delivery service model to assess the programs provided for by the IEA will be designed and an information system developed.

Instructional materials and curriculum with a focus on native language and culture will be developed with appropriate consistent tribal input and approval by the tribes. Dr. Murphy estimated that \$370,000 would be needed for this development. Requests for proposal will be advertised for:

- the development of exemplary programs to serve Native American students; and
- the development of tutorial programs for Native American teachers who are unable to pass the New Mexico Teacher Assessments. Costs have been estimated at \$100,000 for the exemplary program study and \$125,000 for the tutorial programs.

Professional services contracts will be made for native language and culture license development to provide assistance to tribes in their development of criteria, programs and verification of competencies for non-degreed individuals. The cost for this assistance has been estimated at \$100,000. Dr. Murphy reported that the Jicarilla Apache Nation has its license program ready for presentation to the advisory council at its August meeting.

The parental and tribal involvement component will include annual Indian education status reports on the school, school district and state levels. The report will be aligned with the reporting requirements of the NCLB and the Public School Reform Act of 2003.

Dr. Murphy discussed the current status of the implementation of the IEA. The following



steps are now being taken:

- the assistant superintendent of Indian education services position is being advertised;
- the site for the northwest regional office is being determined;
- two joint powers agreements and two requests for proposal are being finalized for distribution;
- the Indian Education Advisory Council is being re-established with 14 members, including the following members:
  - four from the Navajo Nation;
  - one from the Mescalero Apache Tribe;
  - one from the Jicarilla Apache Nation;
  - three from the southern pueblos;
  - two from the northern pueblos; and
  - four representing Native Americans, the BIA, head start organizations and the general public;
- bylaws, aligned to the IEA, are being determined for the council;
- the budget for the implementation of the act is being finalized;
- the assistant superintendent position is being hired;
- the staff for the northwest regional office is being hired; and
- a systematic reporting process is being established.

Questions and concerns from the committee focused on:

- how the culture and language components will actually be implemented in the classroom;
- if non-natives would be eligible for the language and culture classes;
- teaching of non-written languages;
- teaching of language and cultural aspects that are sacred to tribes;
- the prevention of segregation of students based on ethnicity as a result of the language and culture focus;
- the provision of special education services to students in need;
- whether preference will be given to a Native American in the hiring of the assistant superintendent position;
- the makeup of the advisory council in terms of proportionality; and
- whether the advisory council meetings will be open to the public to allow the public to express their concerns.

Dr. Murphy said that the tribes would be consulted on the concerns discussed and listed above. Penny Bird, director of instruction, Zuni Public School District, spoke of her concerns about an emphasis on test scores only and not on helping to develop the student as "a good human being".

### **! Committee Request**

Dr. Murphy was requested to give the committee members copies of the SDE reorganization chart.

## **EDUCATION OF NATIVE AMERICAN STUDENTS — IMPROVEMENT AND ACCOUNTABILITY**

Mel Morgan, Ph.D., assistant superintendent of accountability and school improvement services, SDE, spoke of the problems in information-sharing between the SDE and school districts. He has been working with school districts to improve the transmission of necessary information, such as test scores and other required reports. It is his job to align the state's accountability system with the NCLB, federal regulations and local needs. Dr. Morgan summarized the NCLB requirements with regard to New Mexico's accountability and assessment systems. (A copy of the handout is in the meeting file.)

Dr. White acknowledged that the tribes had begun a good working relationship with Dr. Morgan. The goal is a seamless integration of information among all the different schools, including tribal, BIA, public and parochial. Senator Tsosie suggested designing an agreement between the tribes and the SDE to ensure continued cooperation in terms of information-sharing between the tribes and the state.

Questions and concerns from the committee included:

- the need for more "built-in" oversight in the SDE for accountability;
- whether school boards know what is required of the local superintendent; and
- whether Indians or non-Indians control the Indian Education Division.

In response to these concerns, Dr. Morgan replied that he is in the process of preparing a simplified accountability handbook and is visiting school board meetings statewide to discuss accountability. He gave his telephone number, 827-6683, and requested that the committee members call him directly with any further questions or concerns. Currently, the division has all Native American employees.

## **CENTRAL CONSOLIDATED SCHOOL DISTRICT ISSUES**

Duane "Chili" Yazzie, president, Shiprock Chapter, discussed his concerns involving the Central Consolidated School District. He said the school district encompasses 14 Navajo Nation chapters and has approximately 7,000 students, of which 6,500 are Navajo. He said that there is concern that the needs of Navajo students are not being met. These problems are not being addressed by the school board and problems have not been corrected by the new superintendent. He stated that changes have been made to the bilingual program that he feels are in violation of school board regulations and federal law. He added that he will be meeting with Governor Richardson and State Superintendent Michael Davis to discuss the issues. Mr. Yazzie thanked the committee for all its efforts on behalf of Indian education. Fanny Atcitty, teacher, Central Consolidated School District, echoed Mr. Yazzie's observations pertaining to the changes in the bilingual education program and feels that she has been the subject of discrimination and retaliation for making her views known.

GloJean Todacheene, former principal and teacher, Central Consolidated School District, said she is very disheartened with the new administration of the school district and the corrective action process. She also feels the bilingual program has been unfairly targeted as the reason for low test scores and that corrective action plans do not recognize the bilingual needs of Navajo students. She stated that the previous non-native administration had been very respectful of Navajo language and culture but that the new administration is not. She said that she feels that "quality teachers" is now being redefined to mean "white teachers" and that bilingual education applies only to Spanish-speaking students, not to Native Americans. She stated that teachers are being told not to speak Navajo and not to refer to Navajo culture in lessons.

Hoskie Benally, Shiprock Chapter member, stated that the school district is not meeting standards and that many employees have made claims of discrimination. He said that these employees do not wish to file complaints in writing because they fear retaliation. He further stated that the Indian Education Committee is not invited to participate in school board meetings to plan the budget. The committee is simply given the budget to sign. Employees are told not to speak in Navajo and are told not to include their clan affiliations in their introductions at meetings, which is a Navajo cultural practice. He added that bilingual teachers are quitting because they are not supported by their principals and are told not to teach Navajo culture in their lessons. They feel their Navajo values are being attacked.

Dr. Larry Emerson, educator, spoke of discrimination against Native American students and teachers by non-Indian people who have no experience in what it is like to live in two cultures. They assume that their culture and their form of education is best. He suggested that it would perhaps be better to form their own school district like Zuni. Of 7,000 students, 6,500 are Navajo. He also discussed how actions by the school district administration impact sovereignty issues. He asked how the state can legally intrude in a sovereign nation's education system.

The committee members discussed the importance of community members voting in school board elections to ensure proper representation in school board decisions. It was stated that the SDE has an intervention unit through which complaints may be filed and the unit will investigate any violations of law. The Civil Rights Division of the United States Department of Justice may also be contacted.

### **! Committee Request**

Senator Tsosie asked that a letter be drafted to Superintendent Davis to ask that the intervention unit investigate the complaint. He requested that a copy of its report be transmitted to the Indian Affairs Committee (IAC) and a copy be transmitted to the Central Consolidated School Board. He also asked the presenters to let the committee know if they were subjected to any retaliation as a result of their appearance before the committee.

Senator Rainaldi yielded the floor to Lawrence Morgan, Navajo Nation Council Speaker. Speaker Morgan thanked the committee for coming and listening to the people's needs. He introduced Randall Morgan, Chris Francis, Virgil Holmes, Merle Pete and Leila Help-Tulley. The meeting recessed at 5:00 p.m.

## **Tuesday, July 15 — Gallup Chamber of Commerce**

Senator Rainaldi reconvened the meeting at 10:15 a.m.

### **AUTHENTICITY OF NATIVE AMERICAN ARTS AND CRAFTS**

Bill Richardson, owner, Richardson Trading, discussed the impact of sales of imitation Indian jewelry and other arts and crafts on retail businesses selling authentic Indian arts and crafts in Gallup. As a dealer, it is his intention to sell only authentic work, and he trades with Navajo, Zuni and other pueblo artists. He said he has seen a lot of imitation work, most of which is imported from Japan, the Philippines and China and much of which is of similar quality to authentic work. It is sometimes difficult to tell the difference between the imitation and authentic pieces.

Ed Jungbluth, executive director, Convention and Visitors Bureau, discussed an article in the Gallup Visitors' Guide that details consumer tips for buyers of Native American arts and crafts. The article suggests that buyers:

- deal with a reputable dealer; and
- ask for a certificate of authenticity.

Mr. Jungbluth stated that it is estimated that there could be as much as 70 percent unemployment in the local arts and crafts cottage industry due to the influx of knockoffs. He suggested that local businesses develop some type of "seal of approval" that could be displayed in a store window to verify that the business sells authentic arts and crafts. Mr. Richardson added that he depends on word-of-mouth recommendations and that, at his store, he gives a one-year return policy on all merchandise. If a customer is not satisfied with his or her purchase, the item may be returned within one year.

Mr. Tanner, owner, Ellis Tanner Trading Company, said it is important to recognize the creative work of Native American artists and to support them. Lionel McKinny, Native American products manufacturer, discussed the Indian Arts and Crafts Act. He discussed the requirements for a product to be defined as "Native-made" and the remedies provided in the act. He stated that it is federal law that the country of origin must be marked on jewelry. If the mark is removed, the law calls for severe penalties. The problem is that the law is seldom enforced. He stressed the importance of obtaining copyrights and trademarks for designs. He said that many Native American designs are imitated and simply called "southwest designs" to bypass any authenticity issue. He suggested creating a copyright and trademark division to assist Native American artists in obtaining copyrights on their designs.

The committee discussed the possibility of creating a copyright and trademark division that would assist artists in the filing of applications, assist with legal aspects and create a fund to finance application and legal assistance.

Michael Rogers, Albuquerque business owner, further discussed the use of labeling and

the designation of products made completely with Indian labor. He feels that no additional legislation is needed but existing laws must be enforced. He discussed the misconception that Native American designs are in the public domain. He added that telemarketing companies often market southwestern designs and imply that they are authentic when they are actually made in China. He suggested that one way to prove an item is authentic is to list the artist's CIB number. He also discussed the practice of selling work under a Native American artist's name when the product was actually made in a foreign country.

### **! Committee Request**

Committee members discussed studying what action would be necessary to better enforce country-of-origin labeling. Representative Madalena asked that staff draft a letter to the United States attorney general to urge enforcement of federal law in regard to Native American arts and crafts.

### **! Bill Proposal**

Representative Madalena further suggested drafting a joint memorial urging Congress to better enforce federal laws concerning Native American arts and crafts and to address the problem of unlabeled foreign imports of imitation Native American arts and crafts.

### **! Committee Requests**

Senator Tsosie asked staff to get copies of new federal laws and regulations concerning Native American arts and crafts.

Representative Madalena said IAC should look at state legislation and see if trademark and copyright language should be added or addressed.

Committee members further discussed copyright and trademark issues. The actual number of Native American artists and craftspeople is difficult to determine, as ethnicity of artists or producers is not tracked for tax purposes. Senator Tsosie suggested the creation of a collective trademark — a trademark owned by the tribe and licensed to Native American artists.

### **! Committee Requests**

Senator Tsosie requested that Native American artists and craftspeople be invited to another meeting to speak to the committee about their concerns. He suggested that Gallup businesspeople be invited to also attend the meeting and that someone from the attorney general's office be present.

### **! Committee Business**

Committee members moved to adopt the minutes of the first meeting. The motion passed and the minutes were adopted.

## **IMPACT AID — HISTORY AND UPDATE**

George Kozeliski, attorney, Gallup-McKinley County Public Schools and Gallup City Attorney's Office, discussed the Zuni school district's impact aid appeal that is before the Tenth

Circuit Court of Appeals. (Handouts are in the meeting file.) It involves the United States Department of Education's determination that the state of New Mexico's operational funding for public schools is sufficiently equalized to allow the state to take credit for federal impact aid funding. Under the Impact Aid Act, public school districts such as Zuni, which are impacted by a federal presence, are entitled to impact aid funding. The federal government allows a state to take credit for impact aid payments if the state can establish that, using a federal formula, it has an equalized system for funding operations within its public schools. Impact aid law allows for a 25 percent disparity in funding. Under current legislation, the state takes credit for 75 percent of the impact aid payments. Zuni has claimed that there is a conflict between the formula established by federal statute and also by federal regulation and a different formula set forth in an appendix to the regulation. The district further contends that the formula in the statute and the regulation should be implemented rather than the formula described in the appendix to the regulation. If the formula in statute is implemented rather than the formula in the appendix, the state would not be equalized and cannot take any credit for impact aid.

The Tenth Circuit Court of Appeals will hear oral arguments on August 25 in Santa Fe. If the Tenth Circuit Court of Appeals invalidates the appendix, the economic impact of the ruling would be severe. The total impact on the state, if it loses, could be somewhere between \$200 million to \$250 million. Karen White, superintendent, Gallup-McKinley County Public Schools, recommended a phase-in schedule of payments over several years if the court rules against the state.

The meeting recessed at 12:00 noon and resumed at 1:45 p.m.

#### State Department of Public Education — Impact Aid

Arlene Strumor, deputy general counsel, SDE, and Steve Burrell, director, School Budget and Financial Analysis Unit, SDE, discussed SDE's interpretation of the impact aid system. Ms. Strumor gave a brief presentation on:

- the federal laws that enacted impact aid;
- the school district application process;
- the weighting factors used by the Impact Aid Office;
- the eligibility threshold;
- the types of payments made to school districts;
- amendments to federal impact aid laws; and
- New Mexico's funding formula, the disparity test and current state law.

She stated that the United States Department of Education made grant awards to six New Mexico school districts totaling approximately \$15,368,400. The awards by school district are:

- Central Consolidated Schools, \$4,833,700;
- Cuba Independent Schools, \$446,400;
- Dulce Independent Schools, \$637,700;
- Gallup-McKinley County Public Schools, \$7,483,000;

- Jemez Valley Public Schools, \$306,500; and
- Zuni Public Schools, \$1,661,100.

### **! Committee Request**

Senator Tsosie requested that the committee be given copies of the Impact Aid Reauthorization Act.

Ms. Strumor stated that SDE is currently working according to regulations established by the Public School Finance Act. If the Tenth Circuit Court of Appeals rules against the state, state policy decisions will have to be made; it would not just be the state superintendent's decision. Only three states have been certified as equalized: New Mexico, Alaska and Kansas. A state must submit a disparity run to the federal government to be certified as equalized. There must be less than a 25 percent disparity.

### **BUREAU OF INDIAN AFFAIRS SCHOOLS**

Lester Hudson, education line officer, BIA, gave a general overview of BIA education. Mr. Hudson stated that the majority of his work has been in New Mexico and that he is a graduate of New Mexico State University and of the University of New Mexico. He discussed the BIA structure. There are five agencies:

- Shiprock Agency;
- Eastern Navajo Agency, Crownpoint;
- Chinle Agency;
- Fort Defiance Agency; and
- Tuba City Agency.

There are 66 BIA schools, of which 31 are in New Mexico. Twenty-three of the 31 schools are BIA schools and eight are grant schools. Fifty-nine of the 66 schools have state accreditation. There are 16,704 students attending the schools, and the schools employ 4,017 people. There are 2,275 students at the Shiprock Agency school and 643 employees.

Goals of the BIA schools include:

- improve reading skills — students should read independently by the end of the third grade;
- increase student attendance;
- improve academic achievement, especially language arts, math and reading focus;
- increase knowledge of Native American language and culture; and
- increase enrollment and retention of students.

Representative Begaye discussed the issues of student migration, including:

- tracking of students;
- problems students face dealing with different curricula at different schools;
- prejudgment of students as to previous education when they change schools;

- students' difficulties in making transitions between schools; and
- information-sharing problems between schools.

Mr. Hudson discussed the development of the Northwest Consortium assessment instrument, which is an examination used to determine what grade level a student should be in. A majority of the schools in the region participated, and information was exchanged via the Internet. The use of the Internet also allowed students' records to follow students if they moved from school to school. However, the security of the Internet system was called into question and the project was halted because of privacy issues. This effectively closed the doors on exchange of information between BIA schools and public schools. The Indian Education Office is in the process of creating a secure Internet system. Once this is done, the office will be able to exchange information with the state.

Mr. Hudson also discussed the Terra Nova tests and the fact that there is no language accommodation for Native American students, as there is for Spanish-speaking students. He also said that federal money has gradually increased this year. The BIA has just finished a new school in Shiprock and is completing other needed renovations and construction. It is in the process of replacing some 50-year-old buildings.

### **! Committee Requests**

Representative Madalena suggested that the committee look at ways to form partnerships between BIA and public schools. Senator Tsosie suggested asking Mr. Hudson to appear before the committee again for a discussion of:

- grades and test scores of Native American students;
- what BIA schools are doing right that could be implemented in public schools and vice versa; and
- what kind of language accommodations need to be made for Native American students.

Judge George Galanis welcomed the committee to Gallup. The meeting recessed at 4:30 p.m.

### **Wednesday, July 16 — University of New Mexico-Gallup (UNM-Gallup), Gurley Hall Room 205-207, Joint Meeting of the Indian Affairs Committee and the Legislative Finance Committee**

Senator Ben D. Altamirano, chair of the Legislative Finance Committee (LFC), called the meeting to order at 9:05 a.m. He welcomed the guests and committee members. The members of both committees introduced themselves and made comments. A moment of silence was observed for the late Gloria Howes. Senator Altamirano read a joint memorial honoring Senator John Pinto for his service to his country as a Navajo code talker during World War II. Senator Tsosie and Representative Madalena made opening remarks.

Dr. Beth Miller, executive director, UNM-Gallup, welcomed the committees to Gallup. She said the branch has 3,200 regular students plus high school and other students for a total of



5,000 students, which is its largest enrollment. The branch works in partnership with the Gallup-McKinley County Public Schools and is focusing on recruitment and retention. The nursing program is back on-line with 80 students. She added that the branch has developed a pre-nursing program to prepare students for the rigors of the nursing program and is adding evening and weekend programs. Of the students, 72-75 percent are Native American and 12 percent are Hispanic.

Tom Payton, president, McKinley County Federation of United School Employees, thanked committee members on behalf of teachers and stressed the importance of the creation of a cabinet-level department of education and a secretary of education.

## **NAVAJO NATION PRIORITY ISSUES**

Presenters for the discussion of Navajo Nation issues included:

- Lawrence Morgan, Speaker, Navajo Nation Council;
- Calvert Garcia, staff assistant to President Shirley;
- Raymond Etcitty, chief legislative counsel, Navajo Nation Council, and former director of the Office of Navajo Tax Commission;
- Mark Maryboy, Navajo Nation councilman, chair of the Transportation and Economic Development Committee (TCDC), Navajo Nation Council;
- Ronnie Ben, division director, Division of Community Development; and
- Julius Pete, legislative liaison, Division of Community Development.

Speaker Morgan introduced his staff and welcomed members. He discussed community development projects and stressed the importance of:

- enhancing government-to-government relations;
- resolving the backlog of projects that need completion; and
- expediting the capital improvement process.

The Navajo Nation has hired a consultant to develop an overall capital improvement master plan. The nation is working on improving its sovereign and internal capital improvement process. The nation advocates for the establishment of a trust fund to hold appropriated funds to facilitate moving forward on projects. The nation supports the establishment of regional centers, located in Crownpoint and Shiprock, to provide technical assistance to communities. This assistance will include helping local communities:

- develop proposals;
- establish partnerships to locate funding resources;
- make sure a project is ready for implementation; and
- ensure that a project moves in a timely fashion so that appropriated funds will not revert to the state.

Mr. Etcitty discussed the issues of dual taxation. He said that the Navajo Nation has had

taxes for the past 25 years. There are seven taxes, including the:

- business activity tax;
- possessory interest tax;
- oil and gas severance tax;
- hotel occupancy tax;
- tobacco products tax;
- fuel excise tax; and
- sales tax.

Tax revenues have been estimated at over \$60 million. The fuel tax revenues are used for road development, hotel tax revenues for tourist development and sales tax revenues for community and economic development. Tax revenues are needed for:

- basic infrastructure for residents and businesses;
- provision of essential government services;
- funding of police, fire and other services; and
- utility development, including water, electricity, sewer, roads and other services.

Dual taxation only affects non-Navajo businesses. Navajo taxes can be imposed on all businesses, but state taxes can be imposed only on non-Navajo businesses. Mr. Etcitty made the following points regarding dual taxation and non-Navajo businesses on the nation:

- non-Navajo businesses bring outside capital into the nation;
- because much of the nation is without basic infrastructure, it is more costly, and sometimes impossible, to start a business on the reservation than off;
- non-Navajo businesses doing business on the nation include Wal-Mart, Target, Intel and Microsoft;
- businesses do not want to pay more taxes than are necessary; and
- businesses do not want to locate to the reservation when the business can locate to a border town and pay only one tax.

The Navajo Nation has tax credits and intergovernmental agreements (IGAs) with nearby states, including Arizona, New Mexico, Utah, California, Colorado and Texas. Tax credits and IGAs with New Mexico include:

- state tax credits and an IGA against the Navajo Nation fuel tax;
- state tax (gross receipts tax) credit against the Navajo Nation business activity tax for coal extraction;
- state tax (severance tax) credit against the Navajo Nation possessory interest tax; and
- state tax (corporate income tax) credit against the Navajo Nation business activity tax.

Senator Altamirano suggested that a representative of the Navajo Nation attend upcoming meetings of the Blue Ribbon Tax Reform Commission to provide input on dual

taxation and other issues affecting the Navajo Nation.

Mr. Garcia welcomed the committees and thanked members for their support and assistance. He outlined issues and possible solutions. (Handout is in the meeting file.) He outlined the Navajo Nation's priority needs as:

- senior programs, including basic infrastructure, transportation and basic necessities;
- head start programs;
- road improvements; and
- other capital improvement projects.

Mr. Ben discussed the capital improvement plan and the hiring of George Cordova as consultant. Mr. Pete thanked the committee members for their assistance.

The committee members discussed road improvement. Both the Navajo Nation and the state of New Mexico have extensive highway and road systems and low populations. It was suggested that more federal dollars be sought for maintenance and improvements. The bonding process was discussed and concern expressed over the life of a loan exceeding the life of a capital project. It was stated that one of the largest sources of tax revenue incomes is the gross receipts tax and that much of that tax is paid by extractive industries operating on the Navajo Nation or other tribal land.

### **! Committee Requests**

Senator Tsosie suggested that the subcommittee of the Blue Ribbon Tax Reform Commission dealing with Indian taxation issues compile a report on taxes that affect tribes and give it to tribal entities. Staff was requested to send a copy of the minutes to Chavez John, P.O. Box 2365, Window Rock, AZ 86515.

Mayor Bob Rosebrough welcomed the committees to Gallup. Senator Tsosie recognized the mayor as being the most Native American friendly mayor. He commended him for his efforts to right historical wrongs.

### **CAPITAL OUTLAY, APPROPRIATIONS AND PROCESS FOR NATIVE AMERICAN PROJECTS**

Representative Lundstrom and Bernie Teba, secretary of Indian affairs, gave a presentation on how the capital outlay process works between the Navajo Nation and the state of New Mexico, including the role of the New Mexico Indian Affairs Department (IAD). (Handout is in the meeting file.) Time constraints and reversion of funds to the state were the primary concerns. Solutions offered were to:

- streamline the process as much as possible;
- use the New Mexico Finance Authority as the fiscal agent;
- provide technical assistance to accelerate certification of projects; and
- create a Native American projects technical assistance bureau.

Representative Max Coll stressed the need for someone to be in charge of oversight and that a logical plan with steps to follow must be provided to applicants.

## **INDIAN AFFAIRS DEPARTMENT STRATEGIC PLAN AND FINANCIAL ISSUES**

Secretary Teba, Sam Cata, IAD deputy director, and DeAlva Calabasa, IAD capital projects, gave an overview of the IAD and the New Mexico Commission on Indian Affairs. (Handouts are in the meeting file.)

The commission's mission is to investigate, study, consider and act upon the entire subject of Indian conditions and relations within the state of New Mexico, including but not restricted to problems of health, economy, education, legislation and local, state and federal government. The current commissioners are:

- Tom Talache, chairman, governor, Pueblo of Nambe;
- Thomas Todacheeney, Sr., vice chairman, Navajo Nation;
- Lynn Roanhorse, secretary, Jicarilla Apache Nation;
- Frederick Peso, Mescalero Apache Tribe;
- Hazel Dayish, Navajo Nation;
- Wilson Ray, Navajo Nation, president, Huerfano Chapter;
- Lawrence Lucero, first lieutenant governor, Pueblo of Isleta;
- Raymond Gachupin, Pueblo of Jemez; and
- Leroy Gabaldon and Norman Assed, members at large.

The commission will focus on:

- defining its authority;
- commission roles and responsibilities;
- tribal relations;
- principles and practices;
- project selection; and
- planning.

In addition, 37 objectives have been set and projected outcomes and benchmark indicators have been identified.

The IAD:

- currently has a staff of 10 and proposes to increase staff by 15;
- administers and monitors \$22 million in resources;
- has an operational budget of \$695,500 with a three percent overhead;
- oversees 14 special projects, totaling \$1.4 million;
- oversees 302 capital outlay projects, totaling \$20 million; and
- has a total fiscal year 04-05 request of \$1,671,940.

IAD duties include:

- serving as the coordinating agency for intergovernmental programs between tribal governments and the state;
- investigating, studying, considering and acting upon Indian issues and relations with the state and providing opportunities for presentation and exchange of ideas relating to Indian affairs;
- assisting in setting policy for and acting as the clearinghouse for state programs affecting Indian people;
- conducting hearings and meetings, making investigations and conferring with officials of local, state and federal agencies to promote the welfare of Indian people;
- receiving gifts, grants, bequests and devises for use in furthering the puposes of the commission; and
- contracting with public or private bodies to provide services and facilities for promoting the welfare of Indian people.

The IAD will be working with other state and tribal departments and agencies. Health and human services issues will be determined in cooperation with the Department of Health (DOH), the Human Services Department, the Children, Youth and Families Department, the Aging and Long-term Care Department and the 22 tribes. The IAD will work with the DOH to conduct emergency management assessments of tribal communities to assist in the creation of emergency preparedness plans.

Secretary Teba has asked the other state department and agency heads to appoint liaison staff to work with IAD staff. IAD staff is working with the Navajo Nation to streamline the capital outlay process. They will be looking into establishing a system for prioritizing projects. It is a goal to fund basic services projects first. Tribal members Richard Bowman, Ida Nelson and Harriet Becenti spoke of the difficulties of working through the capital outlay process at the chapter level and the need for training on the process and on funding requirements.

The committee discussed capital project issues. The following concerns were raised:

- it is difficult to obtain matching funding;
- if a project is paid with both county and Navajo Nation funds, who owns the project?;
- who will cover any shortfalls in a joint project: the county or the Navajo Nation?;
- what regulations and inspections are followed: county or Navajo Nation?; and
- what entity assumes liability for the project?

### **! Committee Requests**

The suggestion was made to form a task force of state and Navajo Nation representatives to study the capital outlay process and Representative Lundstrom's proposal.

Representative Luciano "Lucky" Varela, LFC vice chair, discussed the LFC's audit of capital outlay, which pinpoints strengths and weaknesses of the process. Problems occur in the

following areas:

- inaccurate recording of information;
- reconciliation of accounts in a timely manner; and
- accurate representation of completed projects.

### **! Committee Requests**

Committee members requested copies of the audit report *Review of Administrative and Monitoring of Capital Outlay by Selected Oversight Agencies, June 19, 2003* from the LFC. Senator Tsosie said the committee should study ways to:

- streamline the process between the two governments and maintain compliance with BIA regulations;
- provide oversight of projects so that funding will not revert; and
- turn around the current cost-reimbursement method and, instead, pay vendors directly.

### **COMMISSION ON HIGHER EDUCATION — IMPROVING NATIVE AMERICAN OUTCOMES**

The following speakers addressed the subject of improving Native American outcomes:

- Miguel Hidalgo, acting executive director, Commission on Higher Education;
- Dr. Mary Jiron Belgarde, associate professor, College of Education, University of New Mexico;
- Dr. Donald Pepion, director, American Indian program, New Mexico State University;
- Dr. Beth Miller, executive director, University of New Mexico-Gallup; and
- Dr. Frank Renz, New Mexico Association of Community Colleges.

Points of discussion and comments included:

- Native Americans have been attending higher education institutions since the mid-17th century but have the lowest retention and completion rates;
- tribes have given a lot of money to higher education institutions and would like to see better retention rates;
- the National Indian Education Association and other organizations have been created to help Indian students succeed;
- methods and mechanisms to help Native American students cope with stress must be developed, including mentoring, tutoring, counseling, bridge programs, financial support, cohort programs and native-specific assistance;
- the quality of relationships among students, teachers and the school determines retention;
- tribal governments must collaborate with state government on improving Indian education;
- dreams and visions are important to achievement in education;
- good academic habits and preparation are essential to success in school;

- reasons for students leaving school include lack of friends, role models and career goals; homesickness; and loneliness; and
- students need a space where they can study, use computers, work with tutors and call home.

The main obstacles for student success are:

- lack of preparation for college;
- lack of financial aid;
- lack of encouragement for middle school and high school students to go on to college;
- transportation needs;
- family and tribal responsibilities that conflict with studies;
- child care needs; and
- lack of trust in the education system.

Measures and programs that are needed to increase success include:

- improving quality of life at school;
- assisting students in preparing for courses;
- tutoring programs;
- mentoring;
- developmental reading in content areas;
- student services for at-risk students;
- faculty development to deal with students with special learning issues;
- Americans with Disabilities Act of 1990 services and services for students with disabilities;
- partnering with local school districts and use of distance learning;
- keeping students in the comfort zone of their communities;
- aligning economic development initiatives with education to provide jobs in the community upon graduation;
- developing follow-up and intervention procedures for students experiencing difficulties; and
- developing more short-term programs as these programs have a higher completion rate than long-term programs.

### **! Committee Request**

Senator Tsosie requested that Dr. Renz present the committee with a handout detailing the community college information.

The presenters were thanked and the meeting adjourned at 7:00 p.m.

Revised: August 11, 2003

**TENTATIVE AGENDA**  
**for the**  
**INDIAN AFFAIRS COMMITTEE**

**August 13-15, 2003**  
**Indian Pueblo Cultural Center, Special Events Building**  
**Albuquerque**

**Wednesday, August 13**

10:00 a.m. CALL TO ORDER

10:15 a.m. INDIAN PUEBLO CULTURAL CENTER — WELCOME

—Ron Soliman, President and CEO, Indian Pueblo Cultural Center (IPCC)

—Tazbah McCullah, Advertising and Marketing Director, IPCC

10:30 a.m. NEW MEXICO DEPARTMENT OF HEALTH — OUTREACH AND  
DISCUSSION OF STATE HEALTH CARE INFRASTRUCTURE

—Joyce Nasyowma-Chalan, Division Director of Public Health, New Mexico  
Department of Health (DOH)

—Pamela Martin, Division Director of Behavioral Health, DOH

—Tom Trujillo, Division Director of Long-Term Services, DOH

12:30 p.m. LUNCH

1:30 p.m. SOUTHWEST DIABETES PREVENTION CENTER — GALLUP OFFICE  
CLOSING

—John Trotter, Ph.D., Vice Dean, University of New Mexico School of Medicine

2:30 p.m. NATIVE AMERICAN URBAN HEALTH CARE — PRIORITY ISSUES

—Norman Ration, Director, Indian Youth Council

—Keith Franklin, Superintendent's Community Council on Equity,  
Albuquerque Public Schools

—Donna Christensen, President, Board of Directors, First Nations Healthcare

—Linda Sunstone, Executive Director, First Nations Healthcare

4:00 p.m. RECESS



**Thursday, August 14**

9:00 a.m. CIGARETTE TAX REVENUE

—Dr. Cheryl Willman, Director, University of New Mexico Cancer Research and Treatment Center

10:00 a.m. NAVAJO NATION BEHAVIORAL HEALTH OFFICE —  
SHIPROCK RENOVATION

—Ron Curis, Project Director, Navajo Nation Behavioral Health

11:00 a.m. JICARILLA HEALTH CLINIC — PROJECT UPDATE

—Darrell LaRouche, Project Engineer, Jicarilla PHS Indian Health Center

12:00 noon LUNCH

1:30 p.m. CENTER FOR NATIVE AMERICAN HEALTH CARE

—Dr. Gayle Dine-Chacon, Director, Center for Native American Health Care (CNAH)

—Dr. Cleora Shunkamola, Associate Director, CNAH

—Carole Nez, Program Manager, CNAH

3:00 p.m. NEW MEXICO TRIBAL HEALTHCARE ALLIANCE

—James Hooper, Chairman, Board of Directors, New Mexico Tribal Healthcare Alliance

4:00 p.m. RECESS

**Friday, August 15**

9:00 a.m. REHOBOTH MCKINLEY CHRISTIAN HEALTH CARE SERVICES ZUNI  
DIALYSIS CENTER

—Mellor C. Willie, Development Officer, RMCHCS/Western Health Foundation

—Andrew Othole, Development Specialist, Pueblo of Zuni

10:00 a.m. NATIVE AMERICAN ELDERLY HEALTH CARE — PRIORITY ISSUES

—Michelle Lujan-Grisham, Secretary Designate, Aging and Long-Term Care Department

—Raymond Espinoza, Area Agencies on Aging Director, Aging and Long-Term Care Department

11:30 a.m. NAVAJO NATION HEALTH CARE — PRIORITY ISSUES

—Anslem Roanhorse, Division Director, Navajo Nation Department of Health

—John Hubbard, Area Director, Navajo Area Indian Health Services

1:00 p.m. ADJOURN

**MINUTES  
of the  
THIRD MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**August 13-15, 2003  
Indian Pueblo Cultural Center, Special Events Building  
Albuquerque**

The third meeting of the Indian Affairs Committee for the 2003 interim was called to order by Representative James Roger Madalena, co-chair, on August 13, 2003 at 10:33 a.m. in the Special Events Building of the Indian Pueblo Cultural Center in Albuquerque.

**PRESENT**

Rep. James Roger Madalena, Co-chair  
Sen. Leonard Tsosie, Co-chair  
Rep. Ray Begaye (8/13-14)  
Rep. Irvin Harrison  
Sen. John Pinto  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Rep. Avon W. Wilson  
Rep. Teresa A. Zanetti

**ABSENT**

Sen. Rod Adair  
Sen. Raymond Kysar

**Advisory Members**

Rep. Ben Lujan (8/14)  
Rep. Fred Luna (8/14)  
Rep. Patricia A. Lundstrom  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella (8/13)  
Rep. James G. Taylor

Sen. Joseph J. Carraro  
Rep. Nick L. Salazar  
Sen. William E. Sharer  
Rep. W.C. "Dub" Williams

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Pamela Ray  
Leslie Schaar

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Wednesday, August 13**

**INDIAN PUEBLO CULTURAL CENTER – WELCOME**

Ron Shutiva, chairman of the board, Indian Pueblo Cultural Center (IPCC), welcomed the committee and briefly gave a history of the facility, which hosts 300,000 visitors annually. The 19 pueblos founded IPCC in 1976 to facilitate the study of Native American culture. IPCC is undergoing intensive renovations in two phases. The facility has received \$1 million from the New Mexico Legislature and \$1 million from the federal government for phase one, which includes building a living village with a circular auditorium for meetings. IPCC has begun its fundraising through private sources for phase two, which includes a hands-on learning center and increased security.

**NEW MEXICO DEPARTMENT OF HEALTH – OUTREACH AND DISCUSSION OF STATE HEALTH CARE INFRASTRUCTURE**

Joyce Nasyowma-Chalan, division director of public health, New Mexico Department of Health (DOH), addressed the organizational structure of DOH, including the statewide comprehensive health plan.

The core functions of DOH are:

- assessing, monitoring and improving the health of New Mexicans;
- providing a statewide system of health promotion, disease and injury prevention, community health improvement and other public health services;
- providing safety net services to eligible individuals with special needs;
- operating six behavioral health and long-term care facilities; and
- playing a key regulatory role in the health care system.

Ms. Nasyowma-Chalan outlined the statewide comprehensive health plan, aimed at creating a framework for state, local and tribal partners to improve health, behavioral health and the health care system of New Mexico. The guiding principles of the statewide comprehensive health plan are to:

- support the development of a system of health services that balances needs, quality safety and available resources;
- promote consumer choice within the funding constraints;
- involve communities and providers in the design and coordination of New Mexico's health care delivery system;
- support community-based and home-based services;
- promote culturally appropriate care;
- provide a venue for health care practitioners and providers to present innovative ideas;

- enhance linkages among health care providers to address the holistic needs of clients in an integrated manner; and
- encourage individuals to make responsible choices for their own health and health care.

The objectives of the statewide comprehensive health plan are to:

- identify and measure annual health and behavioral indicators to ensure positive outcomes;
- improve access to a comprehensive, integrated continuum of care, consisting of prevention, early intervention, primary care, tertiary care and long-term care services;
- maintain and improve quality, while streamlining health care practices to minimize growth in expenditures;
- strengthen New Mexico's current health care workforce while implementing strategies to enhance recruitment;
- maximize state health resources and ensure fiscal accountability;
- reduce health disparities;
- enhance prevention and early intervention services; and
- reduce chronic disease by focusing on the risk factors associated with these diseases.

Ms. Nasyowma-Chalan then discussed the role of the Public Health Division (PHD) and public health issues affecting New Mexicans. PHD coordinates systems of care and delivers services to communities to promote health and prevent disease, injury, disability and premature death. The goals of the division are to:

- prevent and control infectious disease;
- improve the health of children and families;
- prevent, detect early and control chronic diseases, including cancer, diabetes and heart disease;
- reduce violence, injuries and disabilities and maintain and improve the emergency response systems in the state, including the bioterrorism infrastructure; and
- ensure access to comprehensive health and support systems promoting health and well-being.

Ms. Nasyowma-Chalan presented a report on the five key health determinants, which are:

- behavioral/lifestyle – 40 percent;
- genetic – 30 percent;
- social – 15 percent;
- health care – 10 percent; and
- environmental – 5 percent.

Tom Trujillo, division director of long-term services, DOH, asked Patricia Ramsey, MSW, metro regional manager, Long-Term Services Division (LTSD), DOH, to speak further on health care issues affecting New Mexicans, specifically people with special needs who require long-term services. LTSD has programs that help those who qualify for services in the areas of:

- traumatic brain injury;
- medically fragile;
- developmental disabilities;
- family infant toddler; and
- intermediate care facility for the mentally retarded.

Ms. Ramsey discussed the family infant toddler program, which serves families of children ages birth to three who have or who are at risk for developmental delay. The program serves 6,500 children, and 780 of the children are Native American.

Pamela Martin, PhD, division director of behavioral health, DOH, concluded DOH's presentation with a discussion on behavioral health issues affecting Native Americans in New Mexico. Ms. Martin expressed concern that Native Americans are underserved in the behavioral health system because they comprise only five to six percent of behavioral health patients, a percentage not representative of the population. Ms. Martin also assured the committee that funding is available for culturally sensitive treatment, including medicine men and sweat lodges.

The committee members discussed that less than 100 state-funded beds exist for substance abuse treatment in New Mexico and that the dually diagnosed are slipping through the cracks. Committee members were also concerned that DOH does not have a position specifically dedicated to Native American issues.

#### Committee Request

The committee requested that the DOH presenters provide the members with Native American-specific information, including the status of the proposed Indian Health Maintenance Organization and the Medicaid opt-in/opt-out program. Committee members also requested an update on collaborations with Indian Health Services (IHS).

#### **SOUTHWEST DIABETES PREVENTION CENTER – GALLUP OFFICE CLOSING**

Dr. John Trotter, vice dean, University of New Mexico (UNM) School of Medicine, and Dr. Mike Trujillo, a University of New Mexico Hospital (UNMH) physician and the former head of IHS, discussed the closing of the Southwest Diabetes Prevention Center (SDPC) in Gallup. Dr. Trotter explained that the SDPC Gallup office was closed in anticipation of the end of its five years of funding through the Centers for Disease Control and Prevention (CDC). According to Dr. Trotter, the CDC was not interested in continuing its funding of the Gallup office. UNM

instead transferred the remaining funds to the UNM-Gallup campus for a diabetes prevention resource center. Dr. Trotter agreed with the decision and stressed that he would rather spend funds on diabetes prevention than on more dialysis centers.

Committee members expressed concern that SDPC's patients now have to travel up to 40 miles three times a week for dialysis treatment. Members also questioned whether SDPC's employees were treated fairly during the layoff.

### Committee Requests

The committee requested that Dr. Trotter provide a detailed accounting of the \$6 million appropriated to UNM for the SDPC. Members also want Dr. Trotter to provide an accounting of the funds UNM transferred to the Diabetes Prevention Resource Center.

Members requested that Dr. Trotter inform the committee of the total number of SDPC patients at closure, including the number of Native American patients.

Representative Lundstrom asked that committee staff draft a letter to UNM to ask for a remedy to the situation.

### **NATIVE AMERICAN URBAN HEALTH CARE – PRIORITY ISSUES**

Norman Ration, director, Indian Youth Council, discussed health care issues affecting the 33,000 urban Indians, representing over 200 tribes, living in Albuquerque. According to the 2000 Census, over 70 percent of Native Americans live in urban areas. Mr. Ration explained that the lack of employment on Indian reservations is largely responsible for this migration.

Albuquerque Area IHS and Dental Clinic serves Albuquerque's Native American population. First Nations Community Healthsource (FNCH) also provides health and dental care to this population.

Donna Christensen, president, board of directors, FNCH, spoke further on health issues facing Albuquerque's urban Indians. FNCH is a private nonprofit organization recognized by IHS as a Native American health care provider. FNCH delivers comprehensive health care to Native American and other underserved Albuquerque populations in a holistic manner by providing:

- primary care services;
- diabetes programs;
- WIC services;
- prevention programs;
- HIV/AIDS services;
- behavioral health services;

- dental; and
- massage therapy.

In response to questions from the committee, Dr. Trujillo spoke about urban Indian health care needs. Dr. Trujillo told members that the top health concerns for urban Indians are substance abuse, diabetes and liver disease. Native Americans living in Albuquerque have poor access to health care because of inadequate health care funding from Congress. In addition, the City of Albuquerque provides no health care funding for its urban Indian population.

Dr. Trujillo also addressed the health care problems of Native Americans temporarily living in Albuquerque, including students. IHS does not provide services or transportation to Native Americans who are not from the area.

Senator Tsosie yielded the floor to Joe Cordova, Pueblo of Taos, who offered his solutions to health care issues affecting urban Indians, including:

- achieving universal statistics on the number of urban Indians;
- continuing exemptions for Medicaid services; and
- hiring a Native American liaison in DOH.

#### Committee Requests

Senator Tsosie asked that committee staff draft a letter to the New Mexico congressional delegation to ask that it increase funding to IHS for urban health care needs.

Senator Tsosie asked that committee staff send meeting minutes to the Indian Affairs Department.

The meeting recessed at 5:20 p.m.

#### **Thursday, August 14**

The committee reconvened at 9:16 a.m.

#### **CIGARETTE TAX REVENUE**

Dr. Cheryl Willman, director, University of New Mexico Cancer Research and Treatment Center (CRTC), updated the committee on the use of cigarette tax funds for CRTC. Dr. Willman provided the committee with New Mexico's 2003 cancer statistics, including that:

- 7,000 New Mexicans will be newly diagnosed with cancer, 70 of these cases will occur in children;

- 7,800 more New Mexicans will be diagnosed with one or more non-melanoma skin cancers; and
- 55,000 New Mexicans are living with cancer.

In 2002-2003, CRTC received recurring funding from:

- annual state appropriation \$2,600,000;
- clinical revenues \$8,500,000;
- Bernalillo County indigent care support \$1,100,000;
- original cigarette tax (one cent) \$ 900,000;
- new cigarette tax (three cents) \$2,500,000 (est. FY04); and
- federal/private research funding \$28,000,000.

In 2002-2003, CRTC received non-recurring funding from:

- tobacco settlement: experimental therapies \$600,000 (FY03); and
- state non-recurring: new faculty hires \$5,600,000 (FY00 to FY04).

In addition to conducting clinical trials, which Dr. Willman says provide the access to the best treatments and prevention strategies, CRTC sponsors research programs aimed at:

- studying the unusual cancer patterns in New Mexicans to determine the genetic, environmental, social and behavioral causes;
- determining the best modes for community intervention for cancer prevention and education and translating discoveries to better treatment; and
- developing new and more effective therapies for cancer disproportionately affecting New Mexico's minority populations.

Dr. Willman told the committee that CRTC is dedicated to researching inhalant alternatives to traditional chemotherapy, which doctors inject into the bloodstream. Under federal rules, IHS doctors are not permitted to inject chemotherapy. In addition, CRTC is researching cancer issues that affect Native American women. For example, Native American women have the highest rate of cervical cancer in the world, endometrial cancer has increased 600 percent in Native American women and the substantial kidney cancer increase almost exclusively affects Native American women.

CRTC also collaborates with tribes, IHS, the Albuquerque Area Indian Health Board and the Center for Native American Health (CNAH) to develop community intervention programs for cancer education, screening, prevention and therapy assistance. CRTC outreach programs include:



- The Gathering of Support, a new community-based program run by Mary Lovato, Pueblo of Santa Domingo, that trains community health representatives in each pueblo and tribe in cancer education and screening;
- CHATT (Computers Helping Adolescents Talk Tobacco): Tobacco Cessation in Navajo Youth, an interactive computer program developed for elementary, middle and high school students that promotes smoking cessation; and
- The Notah Begay Cancer Awareness and Prevention Campaign, a new program that promotes cancer awareness in Native Americans.

Senator Tsosie yielded the floor to Dr. Trujillo, who explained to the committee that doctors must be board-certified and satisfy intensive training requirements to administer injection chemotherapy. Consequently, it is necessary to develop inhalation therapy for IHS patients and patients at smaller hospitals without board-certified doctors.

Both Dr. Willman and Dr. Trujillo complimented the legislature on its foresight in developing the New Mexico Tumor Registry 30 years ago. The registry made cancer a reportable disease, so CRTC can look at the trends in 30 years of accurate data. Dr. Willman explained that individual identification in the registry is confidential, but CRTC can look at the type of cancer, as well as the person's age and race. While state law does not let the CRTC know a person's tribal affiliation, tribes can request cancer trends specific to the community.

#### Committee Requests

Senator Tsosie asked that committee staff draft a letter to the federal Health and Human Services Department to ask that New Mexico's Medicaid reimbursement rate be taken seriously.

Representative Lundstrom requested that committee staff set up a committee field trip to CRTC for cancer screening.

#### **NAVAJO NATION BEHAVIORAL HEALTH OFFICE – SHIPROCK RENOVATION**

Ron Curtis, project director, Navajo Nation Behavioral Health, discussed the renovation of the Shiprock facility, which will add 57,000 square feet of useable space. Mr. Curtis explained that the new wing, a \$110 million project, will have both residential and transitional living, as well as aftercare, follow-up and women's services. The facility will treat patients from the 110 chapters on the Navajo Nation reservation and the surrounding tribes. Mr. Curtis is also looking at federal and tribal funding for the Shiprock renovation. IHS has already committed funding for the project design but not for the renovation costs.

#### **JICARILLA HEALTH CLINIC – PROJECT UPDATE**

Darrell La Roche, director, health facilities, Albuquerque Area IHS, updated the committee about the IHS joint venture construction program. Under a joint venture agreement, a

tribe funds the planning, design and construction of a health care facility and leases the facility to IHS for 20 years at no cost. In return, IHS agrees to equip, staff and fund operations and maintenance for 20 years.

Congress appropriated \$3 million for equipment to the Jicarilla Apache New Health Center, a 61,000-square-foot comprehensive health care facility, in FY01. The facility is slated to open at the end of FY04.

Committee members expressed concern that Congress had not allocated funds for FY03. Dr. Trujillo explained that although the House of Representatives relies on the IHS budget listing, IHS joint venture construction program funding was not included in President Bush's final budget.

#### Committee Request

Members asked that committee staff draft a letter to the New Mexico congressional delegation expressing support for continued funding for the IHS joint venture construction program.

#### **CENTER FOR NATIVE AMERICAN HEALTH CARE**

Dr. Cleora Shunkamola, associate director, CNAH, discussed the partnership between New Mexico's tribal communities and UNM, which began with an official dialogue in 1999. In 2002, CNAH was established. CNAH activities include:

- tribal consultations;
- evaluation of tribal priorities; and
- recruitment and retention of Native American medical students.

According to Dr. Gayle Dine-Chacon, director, CNAH, many Native Americans distrust the medical system, which does not understand their culture and language. To help address Native American health issues, Carole Nez, program manager, CNAH, visits tribal communities and asks:

- What is the greatest health need of your tribal community?
- What important services would you like the center's help with?

Ms. Nez's questions revealed tribal priority needs, including:

- health career development for Native American youths;
- effective communication between UNMH and tribes;
- cultural sensitivity training for health professionals;
- regional substance abuse and mental health services; and
- dialysis centers for tribes far from urban areas.

### Committee Business

Committee members moved to adopt the minutes of the second meeting. The motion passed and the minutes were adopted.

### **NEW MEXICO TRIBAL HEALTHCARE ALLIANCE**

James Hooper, chairman, board of directors, New Mexico Tribal Healthcare Alliance (TCA), discussed TCA's goal of becoming the fourth managed care organization (MCO) in New Mexico. Dr. Sue Wong, on loan to TCA from IHS, explained that MCO status would allow TCA to receive Medicaid funding on behalf of Native Americans. Mr. Hooper told the committee that the state was encouraging TCA to apply for primary care case management (PCCM) status as opposed to MCO status at this time. Because some PCCM services are covered on a fee-for-service basis, PCCMs result in lower risk for the state than do traditional MCOs.

Senator Tsosie yielded to Keith Franklin, Albuquerque Commission on Indian Affairs, who expressed concern that TCA is relying on largely urban Indian subscribers but has no urban involvement on the board of directors. Dr. Wong responded to Mr. Franklin's concerns by promising to meet with urban Indian leaders.

Senator Tsosie then yielded to Mr. Cordova, who did not believe that the MCO was a priority in terms of Native American health care needs. He also wondered how IHS could justify spending \$435,000 on the program when other Native Americans do not have direct services.

Finally, Senator Tsosie yielded to Dr. Ron Lujan, who was concerned with TCA's lack of accountability and oversight.

The meeting recessed at 4:47 p.m.

### **Friday, August 15**

The committee reconvened at 9:15 a.m.

Before calling Mellor C. Willie, development officer, Rehoboth McKinley Christian Health Care Services (RMCHCS)/Western Health Foundation, Senator Tsosie yielded to Dr. Paul Roth, dean, UNM School of Medicine. Dr. Roth answered questions for the committee concerning the diversity of the medical school. While admitting that not enough Native American and Hispanic students attend the school, Dr. Roth pointed out that its ranking is second after Puerto Rico in the number of Hispanic students and third in the country in the number of Native American students and staff.

Steve McKernan, CEO, UNMH, then clarified Dr. Willman's testimony concerning CRTC. Committee members wanted assurances that CRTC would benefit the Native American community and expressed concern that UNMH broke previous promises, including the guarantee of 100 beds for Native Americans at the hospital. Mr. McKernan vowed a renewed commitment to serving Native Americans and told the committee that he has been meeting with the All-Indian Pueblo Council a couple of times a year.

### **REHOBOTH MCKINLEY CHRISTIAN HEALTH CARE SERVICES ZUNI DIALYSIS CENTER**

Mr. Willie updated the committee about the RMCHCS dialysis network, and specifically, the Zuni Dialysis Center (ZDC). RMCHCS operates the largest network of dialysis centers for Native Americans in the southwest. The Gallup Dialysis Center has 22 stations and operates six days per week; the Crownpoint Dialysis Center has 10 stations and operates three days a week; and the ZDC has 25 stations and operates six days a week.

The federal Health and Human Services Department has named ZDC the premier dialysis treatment program in the country for the last three years. Mr. Willie explained that ZDC received this honor because patients live an average of 9.5 years after beginning treatment, which is longer than at other facilities. He attributed this success to ZDC's nonprofit status and the supportive atmosphere.

ZDC has reached its full capacity, serving 112 patients, and Mr. Willie projects an annual growth of 12 to 15 percent in new Zuni dialysis patients. Therefore, Zuni dialysis patients must travel to Gallup, which is more than 30 minutes away from ZDC, three times a week to receive dialysis treatment.

Andrew Othole, development specialist, Pueblo of Zuni, then explained that the increase in Zuni dialysis needs was caused, in part, by the unsafe drinking water, which forced Zuni residents to drink soda. With funding from IHS and New Mexico, Zuni erected a new water system approximately 22 miles from the pueblo.

### **Committee Requests**

Senator Tsosie asked that committee staff draft a letter to the Zuni school board asking whether its schools' soda machines pose a liability risk in light of increased adult-onset diabetes in children.

Committee members requested information on whether other tribes and pueblos projected a similar annual growth of 12 to 15 percent in dialysis patients.

## **NATIVE AMERICAN ELDERLY HEALTH CARE – PRIORITY ISSUES**

Michelle Lujan-Grisham, secretary designate, Aging and Long-Term Care Department (LTCD), discussed the need to expand services available to Native American elders. She expressed concern that Native American elders are not receiving the necessary services because of their remoteness. Poor roads and cultural barriers increase the difficulty in bringing services to Native Americans living on reservations. Ms. Lujan-Grisham explained that the lack of coordination between state and federal funding further complicates the situation.

LTCD is working to expand services to Native American elders by:

- expanding the number and type of providers serving Native American elders;
- expanding the existing transportation infrastructure to enable elders living in remote areas to access services;
- coordinating state, federal and tribal funding sources to maximize services;
- establishing an independent and fully funded Indian Area Agency on Aging (IAAA) within five years; and
- coordinating services with IHS to maximize the benefits available for elders.

Ms. Lujan-Grisham then explained two potential reorganization plans aimed at increasing awareness of Native American issues within LTCD. Plan "A" has IAAA reporting directly to the secretary of aging and long-term care, and plan "B" elevates IAAA to division status. The committee discussed the plans and realized that both have advantages and disadvantages. Ms. Lujan-Grisham promised to update the committee as department reorganization talks progress.

Because of the increased cost and lack of funding for long-term care, as well as the approximately 3,000 substantiated abuse and neglect complaints in nursing homes, Ms. Lujan-Grisham advocated home health care. Committee members expressed concern that family members would abuse this option.

Ray Espinoza, director, IAAA, discussed the agency's accomplishment, including the:

- hiring of a nutrition coordinator;
- timely reporting from contractors; and
- continued communication with pueblo and tribal administrations.

### **Committee Requests**

Representative Taylor requested that Ms. Lujan-Grisham testify at the October meeting about abuses in home health care.

Committee members requested information about Medicare, including reimbursement rates and fraud.

### **NAVAJO NATION HEALTH CARE – PRIORITY ISSUES**

Frank J. Dayish, Jr., vice president, Navajo Nation, asked that the New Mexico Legislature address Navajo Nation homeland security and West Nile virus prevention plans. Mr. Dayish expressed concern over the safety of Navajo Nation residents and livestock in light of the two West Nile virus cases in the area.

Anslem Roanhorse, division director, Navajo Nation Department of Health, presented the committee with an overview of the Navajo Area Indian Health Service (NAIHS). The health care network includes five hospitals, six health centers, 15 health stations and 22 dental clinics. NAIHS's budget in FY 2003 was \$534.6 million, the majority of which was a federal appropriation of \$391.1 million. The remaining \$143.5 million was funded through Medicaid, Medicare and private insurance.

Mr. Roanhorse identified 12 priority Navajo Nation health care needs, including:

- behavioral health;
- long-term care;
- Medicaid;
- data sharing;
- homeland security and bioterrorism;
- syphilis outbreak;
- uranium exposure;
- state and tribal relations;
- diabetes mellitus (type 2);
- nursing home and trauma facilities; and
- the Shiprock treatment center.

Behavioral health recommendations:

- make behavioral health services for youth a state and tribal health priority by increasing funding in proportion to the escalating cost and need for behavioral health services;
- develop an agreement among tribal, federal and state entities to outline roles and responsibilities for providing medical and mental health services to adolescents who are detained under Navajo Nation court jurisdiction and held in a Navajo Nation facility in New Mexico, Arizona or Utah;
- collaborate with New Mexico, Arizona and Utah to ensure that adolescents are not referred to the correctional center without strong legal justification and need; and

- increase funding to renovate the former Shiprock IHS facility and convert it into an accredited residential treatment center.

#### Long-term care recommendations:

- return institutionalized Navajo elderly citizens to their community and home environment;
- coordinate with New Mexico in the development of laws governing home and community-based services and long-term care facilities;
- expand the ombudsman programs for client advocacy on and off the Navajo Nation;
- establish communication and enhance coordination with both private and public personal care option services providers and the Navajo Nation;
- establish a uniform system of enforceable quality assurances for elder programs and services on and off the Navajo Nation; and
- establish advocacy networks to promote Navajo Nation elderly issues at the local, state and national levels.

#### Medicaid recommendations:

- compile a list for IHS of people who must be recertified for Medicaid;
- share patient information between the Income Support Division (ISD) of the Human Services Department and IHS to keep information current;
- place ISD eligibility workers at IHS facilities either on a full-time basis or intermittently;
- place ISD workers in Navajo communities and allow them to take applications for Medicaid and food stamps;
- address the staff shortage and high turnover at the Gallup ISD office, which leads to delay in application processing; and
- involve the Navajo Nation and IHS in state discussions regarding Medicaid reform.

#### Data sharing recommendations:

- disseminate state and CDC information to the Navajo Nation and the public;
- expand the current interagency data sharing initiatives between New Mexico and tribal entities;
- develop a policy between New Mexico and the Navajo Nation that maximizes intra-agency coordination of requests for health data, data transmission and exchange, data analysis, dissemination and publication of health data;
- coordinate and establish education and training opportunities between New Mexico and the Navajo Nation for individuals and organizations on understanding data and statistics; and

- establish a clearinghouse where all Navajo Nation data and statistics may be archived and stored.

#### Homeland security and bioterrorism recommendations:

- acquire additional resources for Native Americans and Navajo citizens of New Mexico through federal funding;
- treat Indian tribes as states, where appropriate, for federal funding eligibility, to prepare, prevent and respond to terrorist activities;
- acquire funding for decontamination equipment for IHS hospitals;
- work with New Mexico to address tribal emergency preparedness; and
- establish an American Indian tribal liaison position within the Department of Homeland Security to coordinate services with Indian tribes.

#### Syphilis outbreak recommendations:

- develop a rapid response team with New Mexico's support; and
- get assistance from New Mexico in addressing the syphilis outbreak.

#### Uranium exposure recommendations:

- give the negative impact from radiation exposure heightened attention;
- streamline the federal process in securing compensation claims by utilizing tribal expertise; and
- secure additional resources from the appropriate agencies to meet the rising caseload.

#### State/tribal relations recommendations:

- develop and implement a meaningful tribal consultation with Utah; and
- include an appeals process in the tribal consultation policy that Indian tribes may use if they believe that the state did not fully adhere to a meaningful tribal consultation process.

#### Diabetes mellitus (type 2) recommendations:

- establish an epidemiology center to review all current and existing data and plan appropriate interventions; and
- provide prevention, intervention and treatment programs through the Navajo Nation Special Diabetes Project.

#### Nursing home and trauma facilities recommendations:



- organize a trauma planning group or advisory committee composed of the UNM Trauma Center, physicians and leadership from the Navajo Nation, Navajo Area IHS, state government and regional trauma centers;
- coordinate with the Navajo Nation Emergency Medical Services, Navajo Area IHS and the New Mexico Injury Prevention and Emergency Medical Services Bureau on compiling and analyzing data to support a comprehensive trauma system; and
- establish a comprehensive Pre-Hospital Data Collection System.

Shiprock Treatment Center recommendations:

- get funding from the New Mexico Legislature and the Indian Affairs Department to implement and complete the renovation of the facility; and
- refurbish the former Shiprock IHS hospital into a useable residential treatment center for Native Americans.

John Hubbard, area director, Navajo Area IHS, discussed the funding shortage for Navajo Nation health services. IHS gives the Navajo Nation \$535 million for health care needs, but only \$395 million of that amount is for direct services. Two hundred twenty-five thousand six hundred thirty-nine people are enrolled in the Navajo Area IHS, and on average, it costs \$3,500 to treat a person. Therefore, the total cost of treating patients to the Navajo Area IHS is approximately \$790 million, which is double its funding amount.

Senator Tsosie thanked the presenters and adjourned the meeting at 1:26 p.m.

Revised: September 10, 2003

**TENTATIVE AGENDA**  
**for the**  
**INDIAN AFFAIRS COMMITTEE**

**September 15-17, 2003**  
**San Juan College, Room 9012**  
**Farmington**

**Monday, September 15**

10:00 a.m. CALL TO ORDER

10:05 a.m. COAL TAX — SHARING AGREEMENT

—Marcelino Gomez, Assistant Attorney General, Department of Justice, Office of the Navajo Tax Commission

11:30 a.m. AVAILABILITY OF COAL IN SAN JUAN BASIN

—Norman Benally, Government Affairs Superintendent, BHP Billiton  
—Ed Pettigrew, Manager of Business Development, BHP Billiton  
—Pat Risner, Senior Project Engineer, BHP Billiton

1:00 p.m. LUNCH

2:00 p.m. ENDANGERED SPECIES PROTECTION IN NEW MEXICO RIVERS

—John D'Antonio, PE, State Engineer and Secretary of the Interstate Stream Commission

3:30 p.m. NAVAJO/GALLUP WATER SUPPLY PROJECT AND DROUGHT RELIEF

—John Leeper, Director, Navajo Nation Department of Water Resources, Water Management Branch  
—Jimson Joe, Program Manager, Navajo Department of Emergency Management

5:00 p.m. RECESS

**Tuesday, September 16**

9:00 a.m. RIGHTS OF WAY ON INDIAN LAND — OIL AND GAS

—Ken Craig, Manager, Engineering and Technical Services Department, Navajo Tribal Utility Authority  
—Steve Graham, Navajo Regional Realty Officer, Navajo Area Office, Bureau of Indian Affairs

10:30 a.m. QWEST PHONE SERVICE AGREEMENT

- Calvert Garcia, Staff Assistant to President Shirley, Navajo Nation
- John Badal, Vice President for New Mexico, Policy and Law, Qwest

12:00 noon LUNCH

1:30 p.m. JICARILLA WATER SETTLEMENT

- Mike Hamman, Water Administrator, Jicarilla Apache Nation

3:00 p.m. DISTANCE LEARNING SERVICES AND TELECOMMUNICATIONS ISSUES IN INDIAN COUNTRY

- Thomas Bennett, Interim Dean, New Mexico Campus, Dine College
- Dana John, Tribal Libraries Program Coordinator, New Mexico State Library
- Larry Kerr, Instructional Designer, Virtual Campus, San Juan College
- Tom Schillaci, Instructional Designer Specialist, San Juan College

4:30 p.m. RECESS

**Wednesday, September 17**

9:00 a.m. WEST NILE VIRUS

- Anslem Roanhorse, Division Director, Navajo Nation Department of Health
- Joyce Nascyowma-Chalan, Division Director of Public Health, New Mexico Department of Health

10:30 a.m. ZUNI SALT LAKE MINING

- Arlen Quetawki, Sr., Governor, Pueblo of Zuni

12:00 noon ADJOURN

**MINUTES  
of the  
FOURTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**September 15-17, 2003  
San Juan College, Room 9012  
Farmington**

The fourth meeting of the Indian Affairs Committee for the 2003 interim was called to order by Representative James Roger Madalena, co-chair, on September 15, 2003 at 10:39 a.m. in Room 9012 of San Juan College in Farmington.

**PRESENT**

Rep. James Roger Madalena, Co-Chair  
Sen. Leonard Tsosie, Co-Chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Rep. Irvin Harrison  
Sen. Raymond Kysar  
Sen. John Pinto  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez (9/16)  
Rep. Teresa A. Zanetti (9/15 and 9/16)

**ABSENT**

Rep. Avon W. Wilson

**Advisory Members**

Rep. Fred Luna (9/16)  
Rep. Patricia A. Lundstrom  
Sen. Richard C. Martinez  
Rep. Nick L. Salazar  
Sen. William E. Sharer (9/15)

Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Rep. Debbie A. Rodella  
Rep. James G. Taylor  
Rep. W. C. "Dub" Williams

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Leslie Schaar  
Pamela Ray  
Larry Matlock

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

## **Monday, September 15**

### **COAL TAX – SHARING AGREEMENT**

Marcelino Gomez, assistant attorney general, Department of Justice, Office of the Navajo Tax Commission, discussed the Navajo Nation's business activity tax (BAT), which is imposed on net source gains. He also presented information on HB 293, which provided credits for Navajo Nation taxes related to coal severance from Navajo lands. Mr. Gomez explained to committee members that the tax credit has helped the coal industry stay competitive by lowering prices. Although coal is still more expensive than in other parts of the country, the Navajo coal industry is more competitive than it would be if paying a layering of taxes.

In response to committee member questions, Mr. Gomez told the committee that a tribal member who lives and works on his own reservation is not subject to state income taxes. However, if the tribal member works on the reservation and lives off the reservation, he is subject to state income tax.

### **AVAILABILITY OF COAL IN SAN JUAN BASIN**

Ed Pettigrew, manager of business development, BHP Billiton (BHP), and Pat Risner, senior project engineer, BHP, testified about the availability of coal in New Mexico, specifically the availability in the San Juan basin. Mr. Pettigrew told committee members that BHP is one of the world's largest producers and marketers of export thermal coal. The company is focusing on progressing approved capital projects and sustaining business improvement initiatives across the company's assets. Mr. Pettigrew and Mr. Risner outlined general operational facts about BHP's New Mexico branch, including that it:

- is the exclusive coal supplier for two mine-mouth power plants;
- yielded 14.7 million tons of coal in 2003;
- has 888 employees, of whom 64.5 percent are Native American;
- has contracts through 2016 at Four Corners Power Plant and through 2017 at San Juan Generating Station;
- has sales through 2017 estimated at 200 million tons; and
- has 700 million to one billion tons of undedicated reserves.

The presenters explained to the committee specifics of BHP Navajo Coal Company reserves, including that the reserves:

- are of a sub-bituminous quality;
- have a five-to-one strip ratio;
- are 20 percent ash, 0.8 percent sulfur and 14 percent moisture; and
- include 700 million tons of undedicated coal within the lease.

Mr. Pettigrew also discussed development opportunities for BHP Navajo Coal Company, including:

- expanding of existing power plants currently being supplied by the Four Corners Power Plant and the San Juan Generating Station;
- exporting sales to power plants in the southwest via a new railroad; and
- selling to new power plants built adjacent to the reserves.

In response to committee member questions, Mr. Pettigrew discussed key events in the near future which would affect coal production and distribution in New Mexico, including the:

- announced closure of McKinley Mine near Gallup, leading to approximately six million tons of annual coal that must be supplied by other sources;
- decrease of coal availability from Utah;
- final decision on the future of the Mohave Generating Station;
- settlement of issues surrounding Black Mesa; and
- termination of Fence Lake development.

## **ENDANGERED SPECIES PROTECTION IN NEW MEXICO RIVERS**

John D'Antonio, PE, state engineer, and secretary of the Interstate Stream Commission, discussed New Mexico's water use and its legal obligation to protect endangered species. Mr. D'Antonio explained that in 2002, New Mexico's water use consisted of:

- 75 percent agriculture;
- 12 percent evaporation;
- eight percent public supplies; and
- five percent mining, power and households.

Mr. D'Antonio then discussed the questions with which his department struggles, including:

- What can or should be used to provide instream flows for endangered species?
- Can or should endangered species share in shortages in times of drought?
- What effect does Endangered Species Act (ESA) compliance have on compact compliance?

To answer these questions, Mr. D'Antonio explained that his department must fully understand the ESA's requirements, specifically Section 9 and Section 7(a)(2).

### Section 9

- Any person is prohibited from "taking" a listed species
- "Take" is defined as "harass, harm, pursue, hunt, shoot, wound, kill, capture or collect..."
- "Take" also includes "habitat modification or degradation"
- Proximate cause and foresight is required

### Section 7(a)(2)

- Federal agency must consult with the Department of Interior regarding any action that may affect a listed species and must avoid jeopardy with regard to those actions

- Action includes "all activities or programs...authorized, funded, or carried out in whole, or in part, by federal agencies..."
- Requirement to consult applies only to "actions in which there is discretionary federal involvement or control"

Mr. D'Antonio discussed whether the ESA permits using stored or imported water. He believes that where storage is the source, a corollary need exists to create environmental conservation pools. Mr. D'Antonio also feels that endangered species should share shortages in times of drought and that the provision of instream flows can result in excess delivery to downstream compact states. In addition, Mr. D'Antonio argued that all states that are party to the compact should bear the burden of protecting and recovering endangered species in the stream system.

Mr. D'Antonio presented information on endangered species protection in the San Juan River basin, home to the Colorado pike minnow and razorback sucker, the middle Rio Grande basin, home to the Rio Grande silvery minnow and the southwestern willow flycatcher, and the Pecos River basin, home to the Pecos bluntnose shiner.

#### San Juan River Basin

- 1991 jeopardy opinion for the Animas-La Plata Project
- Reasonable and prudent alternative
  - depletions limited
  - seven-year research program
  - flows mimicking "natural hydrograph" during and after research period
  - recovery implementation program (dual goal of species protection and water development)
- Flows for fish provided from Navajo Reservoir storage
- 2002 draft environmental impact statement: re-operation of Navajo Reservoir to provide fish flows (target flows not linked to drought conditions)
- Recommendations for San Juan River operations and administration for 2003
  - endangered fish share shortages
  - no spring release

#### Middle Rio Grande Basin

- 1994 – Rio Grande silvery minnow listed
- 1996 to present – supplemental water program
- 2001 – conservation water agreement
- 2001 – three-year biological opinion (target flows not linked to drought conditions)
- 2002 to 2003 – district court and Tenth Circuit Court rule that Bureau of Reclamation has discretion to reallocate stored and imported water from contractors to the minnow
- 2003 – emergency drought water agreement with the federal government (target flows linked to drought conditions)

### Pecos River Basin

- 1991 – biological opinion (jeopardy with regard to bureau's Pecos River operations with reasonable and prudent alternatives)
  - issue is releases of large blocks of stored water for purposes of compact compliance and irrigation deliveries
  - releases adjusted to allow smaller releases over longer time periods to benefit the fish
- 1991 – memorandum of understanding implements reasonable and prudent alternative
- 2000 – Forest Guardians file suit
- 2001 – settlement agreement (2001 irrigation season only)
- 2002 – Forest Guardians file suit again
- 2003 – biological opinion (target flows linked to drought conditions)

Committee members expressed concern that California has been overusing its allotted water resources, which adversely affects New Mexico. Mr. D'Antonio explained that when California uses more than its apportionment, an inadvertent overrun exists that requires payback. In addition, California is working on a quantification settlement agreement that permits California 12 years to reduce its water use.

### **NAVAJO/GALLUP WATER SUPPLY PROJECT AND DROUGHT RELIEF**

John Leeper, director, Navajo Nation Department of Water Resources, Water Management Branch, gave an overview of the Navajo/Gallup water supply project, with an anticipated construction cost of \$440 million and annual operation maintenance and replacement cost of \$12 million.

Bernadette Tsosie, who works with Mr. Leeper, then discussed San Juan River and Navajo Dam shortages. She summarized Navajo inflow history, including that the:

- 2002 inflow was half of the 1977 previous low;
- 2003 inflow is about 45 percent of the median inflow;
- inflow for the five-year period ending in 2003 was the lowest in the 1931 to 2003 period;
- five-year period ending in 2002 was the second lowest in the 1931 to 2003 period; and
- 10-year period ending in 2002 was the second driest on record.

Ms. Tsosie also presented information on Jicarilla Apache water subcontracts. According to Ms. Tsosie, Jicarilla subcontracted 16,000 acre-feet of delivery to area companies that offered a mitigation fund for non-Navajo and Navajo irrigators. Ms. Tsosie then explained shortage sharing agreements between Navajo Reservoir contractors and river diverters to share the water shortage equally. All parties must stay within targeted diversions even if no shortage exists. Shortage sharing benefits the Navajo Nation by ensuring water for San Juan River irrigators and establishing the Navajo Nation's leadership role for San Juan River planning. Water shortage sharing provides for:

- Navajo Reservoir elevation to be protected at 5,990 feet;
- water conservation measures to be implemented;



- additional water to be stored in the Navajo Reservoir;
- Navajo Reservoir water to the irrigators;
- incremental shortage to be shared among all San Juan basin irrigators;
- participation by area companies in the shortage;
- a mitigation fund for the irrigation projects; and
- a climate that will discourage water users from proceeding with litigation.

Committee members expressed concern that communities desperately in need of water will not benefit from the Navajo/Gallup water supply project.

#### Committee Requests

Representative Lundstrom asked that committee staff draft a letter to the governor of Arizona regarding upper basin water for Window Rock. Representative Lundstrom also asked that committee staff draft a letter to the state engineer regarding the requirement of a Navajo settlement prior to beginning the authorization process.

The meeting recessed at 6:20 p.m.

#### **Tuesday, September 16**

The committee reconvened at 9:45 a.m.

#### **RIGHTS OF WAY OF INDIAN LAND – OIL AND GAS**

The scheduled presenters, Ken Craig, manager, Engineering and Technical Services Department, Navajo Tribal Utility Authority, and Steve Graham, Navajo Regional Realty officer, Navajo Area Office, Bureau of Indian Affairs, were absent.

#### **QWEST PHONE SERVICE AGREEMENT**

John Badal, vice president for New Mexico, Policy and Law, Qwest Corporation, discussed his company's Tribal Lifeline and Tribal Link Up programs. The Tribal Lifeline program provides reduced monthly charges to telephone customers who qualify. Most qualifying customers can obtain services for as low as \$1.00 per month. The Tribal Link Up program provides reduced connection charges to telephone customers who qualify. A credit of up to \$100 to reduce the cost of initial connection charges and line extension fees is provided. The credit applies on the main home telephone line listed in the name of the eligible telephone subscriber but does not cover the cost of wiring inside the home. To be eligible for the programs, applicants must live on tribal lands and participate in one of the following public assistance programs:

- food stamps;
- Medicaid;
- Supplemental Security Income;
- federal public housing assistance;
- Low Income Home Energy Assistance program;

- Bureau of Indian Affairs general assistance programs;
- tribally administered Temporary Assistance for Needy Families;
- Head Start; or
- national school lunch program.

Calvert Garcia, staff assistant to President Shirley, Navajo Nation, presented the memorandum of agreement (MOA) among Qwest Corporation, Navajo Nation and Bureau of Indian Affairs, signed August 13, 2003. The service areas impacted by the MOA include:

- community schools;
- tribal and federal administrative officers;
- Indian Health Service centers;
- community health representatives;
- emergency medical technicians;
- Navajo Nation courts;
- housing services;
- emergency services; and
- economic development.

Chapters affected by the MOA include:

- Huerfano;
- Nageezi;
- To'hajiilee;
- Baca-Prewitt;
- Thoreau;
- Iyanbito;
- Tseyatoh;
- Rocksprings;
- Church Rock;
- Red Rock; and
- Manuelito.

Committee members complimented the Qwest Corporation and the Navajo Nation for working together to provide phone service.

## **JICARILLA WATER SETTLEMENT**

Mike Hamman, water administrator, Jicarilla Apache Nation, gave committee members a brief history of the Jicarilla Apaches. The Jicarillas were the first tribe in the United States to acquire and operate their own oil and gas production company, buying out the interests of a private sector development partner in 1977. Mr. Hamman explained that Jicarilla settled its water rights claims in the San Juan and Rio Grande basins in 1992 and adjudicated its claims in 1999. Since then, the Jicarillas have been working on protecting settlement rights and are directly involved in ESA activities in both the San Juan and Rio Grande basins.

Committee members questioned whether the present authorization process is accurate. Mr. Hamman agreed with most members who believe that a parallel process is necessary.

## **DISTANCE LEARNING SERVICES AND TELECOMMUNICATIONS ISSUES IN INDIAN COUNTRY**

Dana John, tribal libraries consultant, New Mexico State Library (NMSL), and Jean Whitehorse, Crownpoint Training and Outreach Center, NMSL, discussed the tribal libraries program (TLP), the first of its kind in the nation to provide specialized library development services to tribal communities on a statewide basis. The main administrative office is located in Santa Fe, with a branch in Crownpoint that serves the Navajo area. Ms. John discussed the grant from the Bill and Melinda Gates Foundation's Native American Access to Technology program, which will allow the TLP to extend its computer training outreach to all New Mexico tribal communities. Training under this grant will include tribal program staff and community members.

In response to committee member questions, Ms. Whitehorse discussed the Crownpoint Training and Outreach Center, which is located in the Dine College/Crownpoint library and staffed by a Navajo librarian who provides reference resources, Internet connectivity, computer training classes and inter-library loan requests to communities in the New Mexico portion of the Navajo Nation.

Larry Kerr, instructional designer, San Juan College (SJC), and Tom Schillaci, instructional designer specialist, SJC, explained the tremendous growth in on-line classes. In three years, the number of students has increased from 156 to 600, and the number of courses has increased from 15 to 40. Mr. Kerr told the committee that 90 percent of on-line students live in a 50-mile radius of the SJC campus, so he is convinced that schedule conflicts and not distance attract on-line students. Mr. Kerr is concerned that chapter houses are only connected to the Internet between 8:00 a.m. and 5:00 p.m. and transportation on the reservation is problematic. He suggested that tribal members could benefit from increased chapter house computer staffing and busing.

Committee members were concerned about reports of Internet pornography at chapter houses, and Ms. John explained possible filter devices.

The meeting recessed at 4:00 p.m.

## **Wednesday, September 17**

The meeting reconvened at 9:22 a.m.

Hoskie Benally, Jr., Central Consolidated School District (CCSD), updated committee members on the situation at CCSD. CCSD encompasses 14 Navajo Nation chapters and has approximately 7,000 students, 6,500 of whom are Navajo. Mr. Benally reported that little has

changed since he testified at the committee's July meeting in Gallup and that CCSD is still discriminating against bilingual teachers who teach Navajo culture in their classes.

#### Committee request

Senator Tsosie requested a subcommittee meeting in Shiprock where committee members could hear all sides of the dispute. There were no objections to this request. The subcommittee meeting is tentatively scheduled for October 23 in Shiprock.

### **WEST NILE VIRUS**

Dr. Scott Bender, veterinarian and special program coordinator, Navajo Nation, presented the Navajo Nation's interim action plan for potential outbreak of West Nile virus. The interim action plan includes sections on authorization and intervention.

#### Authorization

On August 13, 2003, the Navajo Nation vice president, speaker of the Navajo Nation Council, area director of Navajo Indian Health Service and director of Navajo Regional Bureau of Indian Affairs issued an executive proclamation declaring that:

- the Navajo Nation Division of Natural Resources, Division of Health, Division of Community Development, Navajo Environmental Protection Agency and other pertinent Navajo Nation programs take appropriate action to address the disease and its adverse impact on the Navajo people;
- all Navajo people and residents of the Navajo Nation are urged to take voluntary preventive measures to assist in the precaution, control and containment of the West Nile virus;
- all owners of equine (horses, donkeys and mules) within the Navajo Nation are urged to obtain the two-shot vaccination of their livestock to protect against this virus as soon as possible;
- all Navajo Nation divisions, departments, programs and entities are urged to allow Navajo Nation employees to assist their families and relatives in obtaining the West Nile virus vaccinations for their equine; and
- the Navajo Nation Emergency Management Commission, in cooperation with the Department of Emergency Management, take necessary and appropriate actions to assist in the prevention of a West Nile virus outbreak should it result in a human case.

#### Proposed Intervention Plan

For the past two years, the West Nile virus prevention team, consisting of employees of the Navajo Veterinarian Program, Navajo Division of Health, Navajo Area Indian Health Services, Navajo Tribal Utility Authority and Navajo Region Bureau of Indian Affairs have been preparing for the incidence of the West Nile virus on the Navajo Nation. The West Nile virus prevention team focused on the following activities:

- uniform media messages to the people of the Navajo Nation;
- applicators trained to certify individuals to treat lagoons;
- one-year surveillance of chicken sentinels;

- two years of mosquito monitoring; and
- public education in communities, schools and work sites.

Since August 13, 2003, the state of preparedness and mobilization has heightened. The present mission is to assess and implement an appropriate interim action plan that will protect the health of the general public and equine against the West Nile virus. The intervention plan will target:

- coordinating and disseminating public information;
- developing and disseminating public education on West Nile virus and other arbo-viruses;
- establishing a protocol for human infection control;
- vaccinating 5,000 equine;
- developing a monitoring plan for the 45,000 non-vaccinated equine;
- disposing of carcasses of affected equine;
- monitoring and treating public lagoons and encouraging treatment of private lagoons; and
- monitoring existing lakes, standing water and bodies of water.

Joyce Nascyowma-Chalan, division director of Public Health, New Mexico Department of Health, then discussed important facts about West Nile virus, including infection, symptoms and treatment of West Nile virus. Ms. Nascyowma-Chalan stressed that while there is no specific treatment for West Nile virus, most people with mild illness recover in a few days. Her suggestions for preventing West Nile virus included:

- avoiding outside activity at dawn and dusk when mosquitoes are most active;
- wearing protective clothing (long pants and long sleeves) and applying insect repellent when outside;
- making sure that doors and windows have tight-fitting screens that are in good repair so mosquitoes cannot get inside; and
- preventing mosquitoes from breeding by eliminating standing water outside the home.

Committee members expressed concern that the New Mexico Department of Health West Nile virus prevention advertising campaign was not reaching non-English speakers.

#### Committee Request

Senator Pinto motioned that committee staff draft a memorial expressing concern regarding the West Nile virus. Senator Adair seconded the motion.

#### **ZUNI SALT LAKE MINING**

Arlen Quetawki, Sr., governor, Pueblo of Zuni, discussed Zuni's victory against the Salt River Project, an Arizona-based public utility. Governor Quetawki explained that 60 miles south of the Pueblo of Zuni lies Salt Lake, home of the Zuni's Salt Mother deity. When water evaporates in the summer, a layer of salt remains on the lake bottoms. Pilgrims and medicine men from Zuni and other neighboring tribes harvest this salt. The Salt River Project intended to build a massive coal strip mine 11 miles northeast of the lake. After nearly two decades of

opposition from the Pueblo of Zuni and environmentalists, the Salt River Project abandoned the project in August 2003.

Committee members congratulated Governor Quetawki on his pueblo's success.

Senator Tsosie adjourned the meeting at 12:47 p.m.

- 10 -

Revised: October 7, 2003

**TENTATIVE AGENDA**  
**for the**  
**INDIAN AFFAIRS COMMITTEE**

**October 9-10, 2003**  
**Room 317, State Capitol**

**Thursday, October 9**

10:00 a.m.      CALL TO ORDER

10:15 a.m.      ABUSES IN HOME HEALTH CARE AND AGING AND LONG-TERM CARE  
DEPARTMENT REORGANIZATION

- Michelle Lujan Grisham, Secretary-Designate, Aging and Long-Term Care  
Department
- Albert Shirley, Home Care Options
- Stacey Laurence, Home Care Options
- Kathrine Benally, Special Care Program, Shiprock
- Lee Richards, Special Care Program, Shiprock

11:30 a.m.      AAMODT SETTLEMENT UPDATE

- John D'Antonio, PE, State Engineer and Secretary of the Interstate Stream Commission
- Stuart Bluestone, Chief Deputy Attorney, Office of the Attorney General
- Stephan Farris, Director of Water, Environment and Utilities Division,  
Office of the Attorney General

12:45 p.m.      LUNCH

1:45 p.m.      WATERSHED FIRE DAMAGE

- John Gonzales, Governor, Pueblo of San Ildefonso
- Louis Zamora, War Chief, Secretary, Pueblo of Taos
- Jerome Jenkins, Director, Forestry, Pueblo of Santa Clara

3:00 p.m.      RECESS

**Friday, October 10**

9:00 a.m.      INDIAN AFFAIRS DEPARTMENT REORGANIZATION

- Bernie Teba, Cabinet Secretary, Indian Affairs Department

10:30 a.m.      NEW MEXICO GAMING ISSUES

- Frank Chaves, Chair, New Mexico Indian Gaming Association

12:00 noon    ADJOURN



**MINUTES  
of the  
FIFTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**October 9-10, 2003  
Room 317, State Capitol  
Santa Fe**

The fifth meeting of the Indian Affairs Committee for the 2003 interim was called to order by Representative James Roger Madalena, co-chair, on October 9 at 10:12 a.m. in room 317 of the state capitol in Santa Fe.

**PRESENT**

Rep. James Roger Madalena, Co-Chair  
Sen. Leonard Tsosie, Co-Chair (10/10)  
Sen. Rod Adair (10/10)  
Rep. Ray Begaye  
Rep. Irvin Harrison (10/9)  
Sen. John Pinto (10/9)  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Rep. Teresa A. Zanetti

**ABSENT**

Sen. Raymond Kysar  
Rep. Avon W. Wilson

**Advisory Members**

Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Rep. Fred Luna (10/9)  
Rep. Patricia Lundstrom  
Sen. Richard C. Martinez  
Rep. Nick L. Salazar

Rep. Debbie A. Rodella  
Sen. William E. Sharer  
Rep. James G. Taylor  
Rep. W. C. "Dub" Williams

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Leslie Schaar  
Liz Holmes  
Alicia Collins

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**October 9, 2003**

**ABUSES IN HOME HEALTH CARE AND AGING AND LONG-TERM CARE  
DEPARTMENT REORGANIZATION**

Michelle Lujan Grisham, secretary-designate, Aging and Long-Term Care Department, presented a report submitted by the Personal Care Option Committee. The report outlined recommendations concerning the Personal Care Option Program (PCO). These recommendations include:

- continuing with the current eligibility criteria;
- clarifying the criteria for eligibility for a nursing facility or PCO;
- changing nursing "facility" label to nursing "services";
- waiving income level on a case-by-case basis;
- establishing an independent assessment process;
- combining assessment, quality assurance and utilization review functions;
- standardizing assessment tools;
- certifying assessors;
- revising the medical assessment form;
- training providers on available consumer-directed model services;
- hiring five to six additional staff for the PCO program;
- credentialing and certifying providers;
- assigning a resource coordinator to each region;
- examining the need to require all providers to offer both the consumer-delegated and consumer-directed models;
- standardizing time sheets and other accountability documents;
- conducting ongoing quality of care audits;
- assigning an authorized representative for some consumers;
- maximizing funding and services from centers for independent living by moving them to the Human Services Department;
- seeking legislation to create a state registry of attendants;
- reducing incentives to advertise for new clients;
- approving all advertising and publicity campaigns;
- reimbursing at a limited capitated hourly rate;
- conducting a cost study to consider reduced hourly reimbursement for the delegated model; and
- providing assistance in transferring to the consumer-directed model.

Albert Shirley and Stacey Laurence, both of Home Care Options, discussed the necessity of respecting the dignity of elders. They stressed that elders should live at home and not in institutions. Ms. Laurence outlined the personal care services offered by Home Care Options, including:

- mobility assistance;
- eating;
- assistance with self-administered medications;

- skin care;
- cognitive assistance;
- household services;
- individualized bowel and bladder services;
- meal preparation;
- hygiene, grooming and bathing;
- minor maintenance of assistive devices; and
- support services.

Ms. Laurence presented committee members with a profile of Home Care Options consumers, including diagnoses of chronic illness. Ninety percent of Home Care Options consumers are suffering from three chronic illnesses concurrently, with consumers suffering from problems with:

- movement/coordination 68%
- cardiovascular 58%
- diabetes mellitus 43%
- sensory 39%
- neurologic/cognitive 26%
- renal 16%
- respiratory 13%
- gastrointestinal 9%
- depression 5%.

Committee members expressed concern that no Native American representation exists on the Personal Care Options Committee.

#### **Committee request:**

Senator Rodriguez moved that the Human Services Department implement regulations for background screening and improved training for caregivers. Senator Carraro seconded the motion. The committee passed the motion, and Representative Lundstrom asked that staff send meeting minutes to the Human Services Department.

#### **Committee business:**

Representative Madalena moved to adopt the minutes of the fourth meeting. The motion passed, and the minutes were adopted.

#### **AAMODT SETTLEMENT UPDATE**

Stuart Bluestone, chief deputy attorney, Office of the Attorney General, and Stephan Farris, director of the Water, Environment and Utilities Division, Office of the Attorney General, explained the *Aamodt* settlement to committee members. They explained that it has taken over 35 years to settle the dispute, which contemplates a regional supply system.

Committee members expressed concern over community reliance on litigation as opposed to working together on a state water plan.

## **WATERSHED FIRE DAMAGE**

John Gonzales, governor, Pueblo of San Ildefonso, told committee members that the resources available to the pueblo to fight fires are insufficient. Louis Zamora, war chief, secretary, Pueblo of Taos, discussed the July 2003 fire, which was located on Taos Pueblo forested lands and burned across two tribal administrative boundaries, the Taos Pueblo tribal land grant and the Taos Pueblo Tribal Blue Lake wilderness. Mr. Zamora presented committee members with a study on Taos Pueblo Encebado post-fire impacts. The study determined that post-fire floods and debris flows are hazardous because they occur with little warning, exert great impulsive loads on objects in their paths, strip vegetation, block acequias, damage structures and endanger people.

Jerome Jenkins, director, forestry, Pueblo of Santa Clara, told the committee that the park service started the Cerro Grande fire, which burned out of control. Like Governor Gonzales, Mr. Jenkins told committee members that resources available to fight the fire were insufficient.

### **Committee request:**

Senator Carraro moved that the committee ask the federal Department of Energy (DOE) to clean up the flood areas around the labs. He and other members expressed concern that hazardous wastes were drifting into San Ildefonso's water sources because of flooding. The motion passed and Senator Carraro asked that staff draft a letter to the DOE asking it to install retention dams.

The meeting recessed at 3:17 p.m.

## **October 10, 2003**

Representative Madalena reconvened the meeting at 10:22 a.m.

## **INDIAN AFFAIRS DEPARTMENT REORGANIZATION**

Bernie Teba, cabinet secretary, Indian Affairs Department (IAD), presented committee members with an IAD reorganization chart and summary. He explained that the legislature has currently authorized four exempt positions: department secretary, deputy secretary, general counsel and secretary, as well as six non-exempt positions. The non-exempt positions are: senior policy analyst, business operations specialist, capital outlay coordinator, contract specialist, public information officer and receptionist. Secretary Teba discussed IAD's plan to hire 11 new positions, including a:

- administrative services division director;
- program services division director;
- human resources specialist;
- computer systems specialist;
- Navajo Nation manager;
- pueblo nation manager;
- Apache Nation/urban manager;
- program specialist for Navajo Nation;
- contract specialist for Navajo Nation;

- secretary for Navajo Nation; and
- secretary for pueblo/Apache/urban.

Of the 11 requested new positions, Secretary Teba explained that the seven position priorities are:

- administrative services division director, who provides overall administrative systems oversight and support in financial management, human resources management and information systems management;
- tribal services division director, who provides overall supervisory program oversight and support to field programs;
- three Navajo/pueblo/Apache/urban managers, who provide tribal-specific program implementation and support for field programs and services;
- program specialist for Navajo Nation, who implements and provides program training and technical assistance on IAD capital outlay and special projects at the tribe and community level; and
- contract specialist for Navajo Nation, who coordinates tribal contractors.

Committee members expressed doubt that three program managers are necessary. Members wondered whether combining the Apache/urban and pueblo manager positions is an option. Secretary Teba assured them that IAD is working on another plan that contains that option.

**Committee request:**

Representative Lundstrom asked that staff draft legislation that permits putting funds in escrow for long-term projects.

Senator Tsosie asked that staff draft legislation simplifying the appropriation process for buying new vehicles. He also asked that staff draft legislation eliminating the reimbursement requirement for poorer communities.

**NEW MEXICO GAMING ISSUES**

Maxine Velasquez, attorney, Stetson Law Office, presented on behalf of Frank Chaves, chair, New Mexico Indian Gaming Association. She explained to the committee that the Stetson Law Office represented a few gaming tribes. Ms. Velasquez is a Pueblo of Laguna member and sits on the State Gaming Board.

Ms. Velasquez explained that New Mexico is home to 22 tribal governments. New Mexico has 19 pueblo governments, the Jicarilla and Mescalero Apache Nations and the Navajo Nation. Thirteen of these tribal governments operate Class III Indian gaming, two under the 1997 compacts and 11 under the 2001 compacts. According to Ms. Velasquez, compact negotiations for Class III Indian gaming in New Mexico have a complicated and divisive past. In 1988 and 1989 New Mexico did not respond to a gaming association request for compact negotiations, and from 1990 to 1994, negotiations failed to produce a compact. The 1995 compacts negotiated and approved in accordance with the Indian Gaming Regulatory Act (IGRA) lost court battles in both the state supreme court and the federal courts. The 1997 compacts were authorized through legislation but remain in litigation. The 2001 compacts evolved through litigation initiated by the state to enforce revenue-sharing payments.

Ms. Velasquez stressed that Indian gaming in New Mexico provides a better quality of life for many communities. Indian gaming also contributes to the New Mexico economy through jobs, commerce and additional tax revenue.

Committee members expressed concern over gambling addictions and the high cost of borrowing money from a casino.

**Committee request:**

Representative Lundstrom also asked that staff research whether any gaming entities licensed in New Mexico own payday loan businesses.

**Committee business:**

Senator Tsosie moved to hold a subcommittee meeting in Shiprock on October 23 to address community concerns regarding the changes in bilingual programming and related issues occurring in the Central Consolidated School District. The motion passed.

Senator Tsosie adjourned the meeting at 1:20 p.m.

Revised: October 20, 2003

**TENTATIVE AGENDA**  
**for the**  
**INDIAN AFFAIRS SUBCOMMITTEE**

**October 23, 2003**  
**Tse Bitai Middle School — Auditorium**  
**Shiprock**

**PURPOSE OF SUBCOMMITTEE MEETING:** The Indian Affairs Committee wants to be certain it has a full picture of the concerns of the community regarding the changes in bilingual programming and related issues occurring in the Central Consolidated School District.

**Thursday, October 23**

- 10:00 a.m.     CALL TO ORDER
- 10:15 am.     TITLE VII ISSUES — PARENT COMMITTEE ROLES AND  
RESPONSIBILITIES  
—Linda Besett, Ph.D., Superintendent, Central Consolidated School District  
(CCSD)
- 10:40 a.m.     BILINGUAL PROGRAMS IN CENTRAL CONSOLIDATED SCHOOL  
DISTRICT SCHOOLS  
—Linda Besett, Ph.D., Superintendent, CCSD
- 11:10 a.m.     SUBCOMMITTEE QUESTIONS  
—Indian Affairs Committee Members
- 12:00 noon     LUNCH
- 1:00 p.m.     AUDIENCE COMMENTS  
—\*Shiprock Citizens
- 2:30 p.m.     ADJOURN

\* People or groups with comments are invited to sign up at the back of the room to speak. Only one person from a group should be identified to express the concerns of the group. Please do not repeat comments. Address all questions to the chair; do not speak directly to the presenter. Please keep your comments brief.

**MINUTES  
of the  
SUBCOMMITTEE  
of the  
INDIAN AFFAIRS COMMITTEE**

**October 23, 2003  
Tse Bitai Middle School Auditorium  
Shiprock**

The subcommittee meeting of the Indian Affairs Committee for the 2003 interim was called to order by Senator Leonard Tsosie, co-chair, on October 23 at 10:23 a.m. in the auditorium of Tse Bitai Middle School in Shiprock

**PRESENT**

Sen. Leonard Tsosie, Co-Chair  
Rep. Ray Begaye  
Rep. Irvin Harrison  
Sen. John Pinto  
Rep. Teresa A. Zanetti

**ABSENT**

Rep. James Roger Madalena, Co-Chair  
Sen. Rod Adair  
Sen. Raymond Kysar  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Rep. Avon W. Wilson

**Advisory Members**

Rep. Fred Luna  
Rep. James G. Taylor

Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Rep. Patricia A. Lundstrom  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella  
Rep. Nick L. Salazar  
Sen. William E. Sharer  
Rep. W. C. "Dub" Williams

**Staff**

Leslie Schaar  
Pam Ray  
Larry Matlock

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Senator Tsosie called the meeting to order at 10:23 a.m. and read the following prepared opening remarks:



*The Indian Affairs Committee for the 2003 interim has twice heard from Central Consolidated School District (CCSD) educators and concerned Shiprock citizens. As you know, CCSD encompasses 14 Navajo Nation chapters and has approximately 7,000 students, of which 6,500 are Navajo. At both the July and September Indian Affairs Committee meetings, committee members heard testimony that Superintendent Linda Besett has made changes to the bilingual program in violation of school board regulations and federal law, including instructing bilingual teachers not to teach Navajo culture in their classes. Members also heard allegations from educators claiming that the school district has discriminated against them because of their commitment to bilingual education. In addition, concerns have been raised that a parent advisory committee has not been either in existence or actively performing its required functions. Some Shiprock citizens feel that to be eligible for federal bilingual education funding, a parent advisory committee must be established and must assist and advise in the development, implementation and evaluation of the bilingual program.*

*The Indian Affairs Committee is concerned that CCSD is ignoring the policies outlined in the Indian Education Act, particularly those concerning respect for and education of Native American language and culture. Because committee members have not yet had the opportunity to get input on this matter from CCSD Board members and supervisors, the Indian Affairs Committee established a subcommittee to examine the issue.*

*Although the format of this meeting differs slightly from the format of regular Indian Affairs Committee meetings, similar rules apply. Please do not interrupt the speakers and address all questions and comments to the chair. Do not directly question the speaker. If you or your group would like to comment, please sign your name on the sign-up sheet at the back of the room. Only one person from a group should be identified to express the concerns of the group. Please do not repeat comments others have said. The committee would like to be certain it has a full picture of the concerns of the community regarding the changes in bilingual programming and related issues occurring in CCSD. Please keep your comments brief so we have the opportunity to hear from everyone interested in speaking before the subcommittee adjourns at 2:30 p.m.*

## **TITLE VII ISSUES — PARENT COMMITTEE ROLES AND RESPONSIBILITIES**

Before Linda Besett, Ph.D., superintendent, CCSD, began her presentation on Title VII issues, Senator Tsosie recognized Duane "Chili" Yazzie, president, Shiprock Chapter. President Yazzie expressed concern with the agenda format. He requested that committee members hear from community members in the morning as opposed to the afternoon as scheduled.

Senator Tsosie thanked President Yazzie and decided that the committee would hear from a few community members after the superintendent gave her first presentation. Then, the committee would adhere to the agenda, which allowed for audience comments after Superintendent Besett's presentation on bilingual programs.

Larry Tsosie, Indian education coordinator, CCSD, Jay Mortenson, assistant superintendent of elementary education, CCSD, and Dennis Nicholson, assistant superintendent of secondary education, CCSD, joined Superintendent Besett in her presentation.

Superintendent Besett began her presentation by outlining CCSD goals, including:

- high student achievement using culturally relevant instruction and materials;
- a safe and welcome learning environment; and
- efficient and effective operations.

The superintendent then discussed Title VII, Johnson O'Malley (JOM) and Title VIII programs, including information on committee membership, roles and responsibilities.

Federal law requires that Title VII committees are comprised of parents of Native American children, teachers and, when appropriate, Native American students. The majority of Title VII committee members in CCSD are parents of Native American children. Guidelines also dictate that Title VII committee members must make decisions in consultation with and with involvement of parents and representatives of served areas.

Unlike Title VII committee membership, JOM Indian Education Committee (IEC) membership must consist only of parents of children who attend schools within the district. Roles and responsibilities of the JOM committee include:

- participating fully in planning, development, implementation and evaluation of programs;
- recommending curricula;
- approving budget preparation and execution;
- recommending criteria for employment in the district;
- nominating a reasonable number of qualified prospective educational programmatic staff members;
- evaluating staff performance and program results and recommending appropriate action; and
- approving or disapproving all funded programs.

For Title VIII impact aid decision-making, a parent committee is not necessary. However, federal law does require tribal and parental involvement. Tribal and parental responsibilities include:

- receiving and reviewing the district's impact aid application, evaluations of education programs and plans for education programs;
- consulting with the district to plan and develop education programs;
- assessing the extent that Native American children participate on an equal basis with other children in programs and activities and comment on participation; and
- discussing the needs of Native American children and making recommendations concerning how children can benefit from education programs.

Superintendent Besett concluded her presentation by explaining that three separate committees are necessary because each committee has different roles and responsibilities. She also supplied committee members with a letter to Jeff Johnson, United States Department of Education (DOE), asking him to clarify his position on the necessity of three committees. According to the superintendent, a DOE audit instructed CCSD to disband the IEC and form three separate committees responsible for Title VII, Title VIII and JOM.

Senator Tsosie recognized the following audience members selected by President Yazzie to represent those opposed to Superintendent Besett's policies: Larry Emerson, Harry Descheenie, Ray Roberts, Johnny Begaye, Don Blackburn and Hoskie Benally, Jr. While the presenters differed slightly in their characterization of the situation, all agreed that Superintendent Besett illegally disbanded the IEC. They feel that the superintendent has stifled and punished CCSD employees who disagreed with her, including:

- Rena Henry, former director of Indian education;
- Paul John, former director of finance;
- Patricia Emrick, director of exceptional programs;
- Gloria Jean Todacheene, former principal of Mesa Elementary School; and
- Tina Deschenie, director of bilingual education and former director of Indian education.

Roz Carroll, general manager, Indian Education Division, Public Education Department, told the committee that federal guidelines discourage three separate committees. She feels that Superintendent Besett has misinterpreted the roles and responsibilities of the committees. In addition, Title VIII planning does not require committee input. Ms. Carroll also informed the committee that CCSD bylaws do not reflect the will of the parents, who are ultimately responsible for determining whether a Title VIII committee should exist.

Art Malendras, attorney, Modrall Sperling, is representing CCSD. Mr. Malendras told the committee that he wants to see the audit so that he can remedy the situation, if necessary. That way, federal funds will not be jeopardized, which is a potential concern of Mr. Malendras.

Committee members expressed concern about the best interest of Shiprock's children. Members noted that the complex rules make teaching the children a more daunting task than necessary. Committee members also stressed that federal funds should supplement and not supplant bilingual education.

Gary D. Ray, vice president, CCSD Board, told the committee that Superintendent Besett believes in the importance of bilingual education. He apologized that other board members were absent from the meeting, but explained that they were at a conference in Anaheim, California, to accept an award on behalf of the district. Mr. Ray gave a statement to committee members from Stanley King, secretary, CCSD Board. According to the written statement, Mr. King believes that bilingual education begins at home with the parents of Navajo children. The schools can then reinforce the language with bilingual programs. He also feels that he has been unfairly judged and accused by the community.

Senator Tsosie informed audience members that he received a letter from Earl Mettler, attorney, Mettler and LeCuyer, P.C., who is representing GloJean Todacheene, Fannie Atcitty and Tina Deschenie in a lawsuit filed in federal court against CCSD Board members and administrators. Mr. Mettler advised his clients not to address the subcommittee.

## **BILINGUAL PROGRAMS IN CCSD**

Superintendent Besett presented information on bilingual education programs and corrective action schools to the committee. CCSD offers five types of bilingual programs:

- dual language immersion;
- enrichment;
- indigenous language;
- maintenance; and
- transitional.

Dr. Besett is aware of the need for bilingual-education-endorsed staff, and numerous CCSD staff are working toward this endorsement. Consequently, CCSD implemented incentives for bilingual education teachers, including:

- a \$500 yearly stipend for completing the 24-hour bilingual endorsement program;
- a \$1,000 stipend for coordinating bilingual testing; and
- reimbursement for bilingual language courses.

Last year CCSD spent \$1,997,286 on bilingual education, excluding Title VII funds. This expenditure primarily funded teacher salaries. Including the Title VII funds, bilingual expenditures totaled \$2,815,698.

Dr. Besett believes that CCSD has understaffed the administration of bilingual education in the past and has chosen two central office administrators to lead bilingual and Indian education, Tina Deschenie and Larry Tsosie. She feels that CCSD has adequate funds to fully fund bilingual education if they are budgeted and expended appropriately. Dr. Besett is a firm believer that parents should have input into the models of bilingual programs implemented in CCSD, as well as the opportunity to choose whether their children participate in bilingual programs.

When Dr. Besett began her tenure at CCSD, all schools except Shiprock High School were corrective action schools. Currently, two schools are in their second year of corrective action status: Tse Bitai Middle School and Mesa Elementary School. Five CCSD schools are in their first year of corrective action status: Nataani Nez Elementary School, Nizhoni Elementary School, Ojo Amarillo Elementary School, Naschitti Elementary School and Newcomb Middle School.

Senator Tsosie again recognized audience member comments from both sides. Shiprock citizen concerns largely focused on the changes in bilingual programming and alleged CCSD employee discrimination. Many community members commented on the negative atmosphere in the

schools. Other speakers told the committee that Dr. Besett was addressing the needs of Navajo students and that she committed herself and the school board to improving student reading performance and test scores.

Committee members expressed concern that only incomplete data on the demographics of CCSD students and staff exist. They wondered if this problem is statewide. Members stressed the necessity that CCSD and Shiprock citizens work together on three issues: the IEC split, the public availability of IEC bylaws and bilingual education. Committee members encouraged both sides to meet informally and resolve the issues.

Senator Tsosie told Dr. Besett and audience members that the next committee meeting is November 19, 20 and 21 at the State Capitol in Santa Fe. He asked both sides to talk in Shiprock before the meeting and update the committee on their conversation on November 19.

Senator Tsosie adjourned the meeting at 6:17 p.m.

Revised: November 18, 2003

**TENTATIVE AGENDA  
for the  
INDIAN AFFAIRS COMMITTEE**

**November 19-21  
Room 317, State Capitol  
Santa Fe**

**Wednesday, November 19**

- 10:00 a.m.     CALL TO ORDER
- 10:05 a.m.     CENTRAL CONSOLIDATED SCHOOL DISTRICT — UPDATE  
                  —Linda Besett, Ph.D., Superintendent, Central Consolidated School District  
                  (CCSD)  
                  —Randy Manning, President, CCSD School Board
- 11:15 a.m.     TRIBAL-STATE JUDICIAL CONSORTIUM  
                  —Robert Klein, Project Manager, Administrative Office of the Courts  
                  —Judge Teresa Gomez, Metropolitan Court, Bernalillo County
- 12:30 p.m.     LUNCH
- 2:00 p.m.     SOUTHWESTERN INDIAN POLYTECHNIC INSTITUTE  
                  —Joe Martin, Ph.D., President, Southwestern Indian Polytechnic Institute
- 3:00 p.m.     NATIONAL STATUARY HALL — POPÉ STATUE UPDATE  
                  —Herman Agoyo, Chairman, Statuary Hall Commission
- 4:00 p.m.     IMPROVING SAFETY OF FOUR CORNERS AREA — LAW  
                  ENFORCEMENT AND JUDICIAL COLLABORATION SYMPOSIUM  
                  UPDATE  
                  —Bernie Teba, Cabinet Secretary, Indian Affairs Department
- 5:00 p.m.     RECESS

**Thursday, November 20**

- 9:00 a.m.     INSTITUTE OF AMERICAN INDIAN ARTS — CAMPUS CONSTRUCTION  
                  —Della Warrior, President, Institute of American Indian Arts
- 10:30 a.m.     NAVAJO NATION DEPARTMENT OF BEHAVIORAL HEALTH SERVICES

—Ron Curtis, Program Manager, Shiprock Adult Residential Treatment Center  
Renovation Project

12:00 noon     LUNCH

1:30 p.m.       EDUCATION OF NAVAJO YOUTH — JOHNSON-O'MALLEY  
—Karen Dixon-Blazer, Executive Director, Division of Diné Education, Navajo  
Nation

3:00 p.m.       DEMOGRAPHICS OF BILINGUAL EDUCATION  
—Gladys Gurule, Ph.D, State Director, Bilingual Education, Public Education  
Department

4:00 p.m.       RECESS

**Friday, November 21**

9:00 a.m.       REIMBURSEMENT FOR CAPITAL PROJECTS — NAVAJO NATION  
—Mark Maryboy, Chairperson, Transportation and Community Development  
Committee, Navajo Nation Council  
—James Jimenez, Secretary, Department of Finance and Administration

12:00 noon     ADJOURN

**MINUTES  
of the  
SIXTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**November 19-21, 2003  
State Capitol, Room 317  
Santa Fe**

The sixth meeting of the Indian Affairs Committee for the 2003 interim was called to order by Representative James Roger Madalena, Co-Chair, on November 19, 2003 at 10:20 a.m. in Room 317 of the State Capitol in Santa Fe.

**PRESENT**

Rep. James Roger Madalena, Co-Chair  
Sen. Leonard Tsosie, Co-Chair  
Sen. Rod Adair (11/20)  
Rep. Ray Begaye (11/19 and 11/20)  
Rep. Irvin Harrison  
Sen. John Pinto  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Rep. Teresa A. Zanetti

**ABSENT**

Sen. Raymond Kysar  
Rep. Avon W. Wilson

**Advisory Members**

Sen. Joseph J. Carraro  
Rep. Ben Lujan (11/19 and 11/20)  
Rep. Fred Luna (11/20)  
Rep. Patricia A. Lundstrom  
Rep. Nick L. Salazar

Sen. Richard C. Martinez  
Rep. Debbie A. Rodella  
Sen. William E. Sharer  
Rep. James G. Taylor  
Rep. W. C. "Dub" Williams

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Leslie Schaar  
Pamela Ray

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

CENTRAL CONSOLIDATED SCHOOL DISTRICT — UPDATE



Linda Besett, Ph.D., superintendent, Central Consolidated School District (CCSD), Randy Manning, president, CCSD School Board and Stanley King, secretary, CCSD School Board, updated the committee on the changes at CCSD since the October subcommittee meeting in Shiprock. Mr. Manning told the committee about the mediation on November 17 in Shiprock. Justice Joseph Black served as mediator. According to Mr. Manning, Justice Baca set a positive tone for the mediation by stating he wanted to hear about the problem and possible solutions. Justice Baca encouraged mediation participants to envision an ideal district and centered the ensuing discussion around this idea. After over five hours of discussion, both groups agreed that:

- The Indian Education Committee (IEC) will remain in existence and function as one group with three sets of responsibilities. As recommended by the federal Department of Education, the committee will call to order and adjourn each program meeting separately.
- The IEC will develop a long-range bilingual education plan to preserve Navajo language and culture.
- The IEC will collaborate with the CCSD school board in drafting new bylaws.

Although both parties agreed that progress was made during the mediation, unresolved issues still exist, including:

- sovereignty issues;
- conflicts between federal, state and Navajo Nation laws; and
- conflicts between state and Navajo Nation culture.

#### TRIBAL-STATE JUDICIAL CONSORTIUM

Robert Klein, project manager, Administrative Office of the Courts, and Judge Teresa Gomez, metropolitan court, Bernalillo County, requested a \$14,000 appropriation for its 2004 Cross-Court Cultural Exchange program. The purpose of the Cross-Court Cultural Exchange is to encourage communication and understanding between tribal and state courts, specifically examining issues of:

- full faith and credit;
- comity;
- jurisdiction;
- child abuse and neglect;
- juvenile justice and delinquency;
- custody and divorce;
- child support; and
- domestic violence.

The committee endorsed the \$14,000 appropriation request.

## SOUTHWESTERN INDIAN POLYTECHNIC INSTITUTE

Joe Martin, Ph.D., president, Southwestern Indian Polytechnic Institute (SIPI), explained that SIPI provides a rigorous and tribally responsive post-secondary learning environment where Native American students:

- reinforce academic capabilities;
- develop foundations in math, science, communication and humanities; and
- acquire advanced technical, scientific, administrative, social and business skills needed by industry and tribal governments.

To meet the most critical needs of New Mexico tribes, Dr. Martin asked that the committee appropriate \$250,000 for SIPI's New Mexico tribal education initiative. The education initiative will:

- assist tribes in accessing quality information, training and advanced academic programs;
- develop an advanced agricultural application in hydroponics to serve as a model for utilizing agriculture as a sustainable economic venture; and
- provide a foundation in the development and continuation of SIPI's tribal management program.

The committee endorsed the \$250,000 appropriation request.

## NATIONAL STATUARY HALL — POPÉ STATUE UPDATE

Herman Agoyo was unable to attend the committee meeting, so Bernie Teba, cabinet secretary, Indian Affairs Department (IAD) presented Mr. Agoyo's request. Mr. Teba requested a \$125,000 appropriation for Popé statue expenses including:

- construction;
- transportation to national statuary hall;
- insurance;
- installation; and
- the unveiling ceremony.

The committee endorsed the \$125,000 appropriation request.

## IMPROVING SAFETY OF FOUR CORNERS AREA — LAW ENFORCEMENT AND JUDICIAL COLLABORATION SYMPOSIUM UPDATE

Mr. Teba discussed the "Safety in Indian Country" conference he attended in Albuquerque. Although many topics were discussed, Mr. Teba identified jurisdictional issues as the conference's focal topic. Conference participants addressed this issue from several perspectives and experiences, including judicial, legal and political.

Mr. Teba also updated the committee on the "Protecting the Spirits of Our Ancestors" conference. Mr. Teba explained that the conference offered state agencies the opportunity to:

- hear tribal concerns and frustrations about the repatriation process;
- create a dialogue between tribes and state agencies on repatriation and protection of sacred sites issues;
- disseminate information regarding state and federal statutes and related issues in the repatriation process; and
- gather tribal input to create a state repatriation act.

The meeting recessed at 4:27 p.m.

### **Thursday, November 20**

Representative Madalena reconvened the meeting at 9:27 a.m.

#### **INSTITUTE OF AMERICAN INDIAN ARTS — CAMPUS CONSTRUCTION**

Della Warrior, president, Institute of American Indian Arts, requested funding for the Achein Center. "Achein" is a Keres word meaning "a place where knowledge is shared". According to Ms. Warrior, the Achein Center will extend learning beyond the classroom through education and research institutes, seminars, conferences, meetings and workshops, as well as through master artist classes and demonstrations. State-of-the-art technology and telecommunication systems will be integrated through an enhanced distance learning program.

The committee endorsed the \$6,000,000 capital outlay request.

#### **NAVAJO NATION DEPARTMENT OF BEHAVIORAL HEALTH SERVICES**

Ron Curtis, program manager, Shiprock Adult Residential Treatment Center renovation project, told committee members that alcoholism and drug abuse are rampant on reservations and pueblos. He asked committee members to approve an appropriation of \$3,400,000 from capital outlay funding to renovate the old hospital in Shiprock and convert it into a residential center for alcohol and drug abuse treatment.

The committee endorsed the \$3,400,000 capital outlay request.

#### **EDUCATION OF NAVAJO YOUTH — JOHNSON-O'MALLEY**

Karen Dixon-Blazer, executive director, Division of Diné Education, Navajo Nation, discussed the federal No Child Left Behind Act of 2001 (NCLB). NCLB aims at closing the achievement gap through accountability, flexibility and choice. According to Ms. Blazer, NCLB improves the academic achievements of students by:

- requiring results;
- creating flexibility at state and local levels by reducing bureaucracy;
- expanding options for parents of disadvantaged children;
- ensuring that children learn to read;

- monitoring progress in math and reading; and
- promoting English proficiency.

Ms. Blazer told the committee members that the Navajo Nation is responding to the NCLB's mandates by providing support to public schools serving Navajo children. The Navajo Nation is also collaborating with local educational agencies, educational organizations and post-secondary institutions to ensure that programs serving Native American children are of the highest quality and provide for the unique educational and cultural needs of these children.

## DEMOGRAPHICS OF BILINGUAL EDUCATION

Gladys Grulé, Ph.D., state director, bilingual education, Public Education Department, told the committee about bilingual education. Bilingual education is an instructional program that uses two languages, one of which is English, as a medium of instruction in the teaching-learning process. Models of bilingual education include:

- dual-language immersion, designed to develop bilingualism and biliteracy in English and home language for both English-speaking and minority language students;
- enrichment, designed to further develop the home language of fully English-proficient students and to teach the cultures of the state;
- maintenance, designed to develop and maintain proficiency and literacy in the home language and in English;
- indigenous or heritage language revitalization, designed to support and revitalize a student's native language and culture through oral and written language instruction with tribal approval; and
- transitional, designed to transfer students from home language instruction to an all-English curriculum.

According to Dr. Grulé, research studies have found many benefits of bilingual education programs, including:

- building self-esteem and improving academic achievement by incorporating the students' cultures into classroom instruction;
- enhancing student intellectual flexibility, creativity and problem solving;
- developing students' literacy skills in English and in the home language;
- building lessons from resources that exist within students' experience and backgrounds to promote more active student engagement and increased student learning;
- encouraging parent participation in school activities and goals;
- expanding student access to people and resources;
- increasing opportunities to compete in the workplace; and
- supporting the development of a stronger national economy.

The meeting recessed at 4:45 p.m.

**Friday, November 21**

Senator Tsosie reconvened the meeting at 9:12 a.m.

## REIMBURSEMENT FOR CAPITAL PROJECTS — NAVAJO NATION

James Jimenez, secretary, Department of Finance and Administration, discussed elements critical to resolving the Navajo capital outlay reimbursement issue, including:

- involving the appropriate Navajo Nation agencies in the consultation process;
- clearly explaining in writing the issues and proposed actions;
- allowing flexibility while adhering to a set schedule; and
- recognizing that tribes and pueblos are administratively and culturally different from each other and the state.

According to Secretary Jimenez, the governor and his administration support restructuring the capital outlay process to better support projects on tribal lands.

Mark Maryboy, chairperson, Transportation and Community Development Committee (TCDC), Navajo Nation Council, discussed TCDC's resolution approving the coordination policy for capital outlay funding requests. Mr. Maryboy recommended that the legislature cooperate with TCDC in establishing a mechanism to share project proposal information with TCDC. He also recommended that the legislature support Representative Lundstrom's proposal for reimbursement alternatives.

Mr. Maryboy updated committee members on capital outlay reforms currently underway within the Navajo Nation, including:

- increasing the capital improvement office's budget for additional field work;
- hiring a consultant to assist in developing efficient and effective procedures to govern the capital improvement office;
- amending the capital review process;
- streamlining the billing process; and
- commissioning a best-practices review of the capital improvement planning process.

## COMMITTEE REQUEST

Representative Lundstrom informed the committee that the Legislative Finance Committee and the New Mexico Finance Authority Oversight Committee are also discussing changes to the procedures for allocating and expending capital outlay appropriations. She requested that the committee ask the Legislative Council to approve an additional meeting day for the three committees to coordinate and jointly work for changes to capital outlay procedures. The Legislative Council approved the request for a meeting, which permits the attendance of these three committees. The meeting will be on December 15 at 10:00 a.m. in Room 317 of the State Capitol.

## COMMITTEE ENDORSED LEGISLATION

Capital outlay requests:

- Institute of American Indian Arts Lifelong Learning Center: \$6,000,000
- Shiprock Treatment Center: \$3,400,000

Appropriations:

- Tribal-State Judicial Consortium: \$14,000
- SIPI: \$250,000
- Popé statue: \$125,000

Bills:

- amend 2003 lottery scholarship bill
- payday loan legislation

Memorials:

- additional enforcement to protect Native American remains and sacred places (to Congress)
- study accommodation for testing students in primary language (to Public Education Department)
- NCLB waiver for tribal government cultural training (to Congress)
- instruct district attorneys to enforce the provisions of the federal Indian Arts and Crafts Act of 1990 (to federal justice department and state district attorneys)
- direct the Commission on Higher Education to include tribal schools in state processes (to Commission on Higher Education)

Senator Tsosie adjourned the meeting at 11:38 a.m.

Revised: December 16, 2003

**AGENDA  
for the  
INDIAN AFFAIRS COMMITTEE**

**December 15, 2003  
Room 317, State Capitol  
Santa Fe**

**Monday, December 15**

- |            |  |
|------------|--|
| 10:00 a.m. | CALL TO ORDER  |
| 10:05 a.m. | LEGISLATIVE FINANCE COMMITTEE SUBCOMMITTEE ON<br>CAPITAL — SUMMARY OF HEARINGS AND<br>RECOMMENDATIONS<br>—Linda M. Kehoe, Capital Outlay Coordinator, Legislative Finance<br>Committee |
| 10:30 a.m. | ROUNDTABLE DISCUSSION ABOUT CAPITAL ISSUES   |
| 12:00 noon | LUNCH  |
| 1:30 p.m.  | TRANSPORTATION AND COMMUNITY DEVELOPMENT<br>COMMITTEE RESOLUTION<br>—Mark Maryboy, Chairperson, Transportation and Community<br>Development Committee, Navajo Nation Council           |
| 2:00 p.m.  | GOVERNOR'S FINANCE COUNCIL REPORT — CAPITAL OUTLAY<br>PROPOSAL<br>—James Jimenez, Secretary, Department of Finance and Administration  |
| 3:00 p.m.  | APPROVAL OF LIQUOR LICENSES IN INDIAN COUNTRY<br>—Gary Tomada, Director, Alcohol and Gaming Division, Regulation and<br>Licensing Department<br>—Earl Tulley                           |
| 4:30 p.m.  | ADJOURN  |

**MINUTES  
of the  
SEVENTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**December 15, 2003  
State Capitol, Room 317  
Santa Fe**

The seventh meeting of the Indian Affairs Committee for the 2003 interim was called to order by Senator Leonard Tsosie, co-chair, on December 15, 2003 at 10:25 a.m. in Room 317 of the State Capitol in Santa Fe. The committee scheduled the additional meeting to discuss proposed changes to the procedures for allocating and expending capital outlay appropriations. The committees currently looking at this issue are Indian Affairs, New Mexico Finance Authority Oversight and Legislative Finance. The New Mexico Legislative Council approved the Indian Affairs Committee request for a meeting, which permits the attendance of these three committees to discuss proposed changes to the capital outlay process.

**Indian Affairs Committee**

**PRESENT**

Rep. James Roger Madalena, Co-Chair  
Sen. Leonard Tsosie, Co-Chair  
Sen. Rod Adair  
Rep. Irvin Harrison  
Sen. John Pinto  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez

**Advisory Members**

Rep. Ben Lujan  
Rep. Patricia A. Lundstrom  
Sen. Richard C. Martinez

**ABSENT**

Rep. Ray Begaye  
Sen. Raymond Kysar  
Rep. Avon W. Wilson  
Rep. Teresa A. Zanetti

Sen. Joseph J. Carraro  
Rep. Fred Luna  
Rep. Debbie A. Rodella  
Rep. Nick L. Salazar  
Sen. William E. Sharer  
Rep. James G. Taylor  
Rep. W. C. "Dub" Williams

**New Mexico Finance Authority Oversight Committee**

**PRESENT**

Rep. Daniel P. Silva, Chair  
Sen. Clinton D. Harden, Jr.

**ABSENT**

Sen. Pete Campos, Vice Chair  
Sen. Manny M. Aragon



Sen. Nancy Rodriguez  
Sen. H. Diane Snyder

Rep. Dona G. Irwin  
Sen. Don Kidd  
Rep. Brian K. Moore  
Sen. Mary Kay Papen  
Rep. Earlene Roberts  
Sen. Shannon Robinson  
Rep. Raymond M. Ruiz  
Rep. Henry Kiki Saavedra  
Rep. Sheryl Williams Stapleton  
Rep. Don Tripp

**Advisory Members**

Rep. Ben Lujan  
Rep. Luciano "Lucky" Varela

Rep. Donald E. Bratton  
Rep. Jose A. Campos  
Rep. Anna M. Crook  
Sen. Dianna J. Duran  
Sen. Joseph A. Fidel  
Rep. Mary Helen Garcia  
Sen. Mary Jane M. Garcia  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Stuart Ingle  
Sen. Leonard Lee Rawson  
Sen. Richard M. Romero  
Sen. Bernadette M. Sanchez  
Rep. Edward C. Sandoval  
Rep. James G. Taylor  
Rep. Robert White

**Legislative Finance Committee**

**PRESENT**

Sen. Ben D. Altamirano, Chair  
Rep. Luciano "Lucky" Varela, Vice Chair  
Sen. Sue Wilson Beffort  
Sen. Phil A. Griego

**ABSENT**

Sen. Joseph J. Carraro  
Rep. Max Coll  
Sen. Linda M. Lopez  
Sen. Cisco McSorley  
Rep. Brian K. Moore  
Sen. Leonard Lee Rawson  
Rep. Henry Kiki Saavedra  
Rep. Nick L. Salazar  
Sen. John Arthur Smith  
Rep. Sandra L. Townsend  
Rep. Jeannette O. Wallace  
Rep. Donald L. Whitaker

**Designees**

Sen. Clinton D. Harden, Jr.  
Rep. Patricia A. Lundstrom  
Sen. John Pinto  
Sen. H. Diane Snyder  
Sen. Leonard Tsosie

Sen. Joseph A. Fidel  
Sen. Mary Jane M. Garcia  
Rep. Roberto "Bobby" J. Gonazales  
Rep. John A. Heaton  
Sen. Stuart Ingle  
Rep. Larry A. Larranaga  
Sen. Carroll H. Leavell  
Sen. Roman M. Maes, III  
Rep. Terry T. Marquardt  
Sen. Mary Kay Papen  
Rep. Pauline J. Ponce  
Rep. Edward C. Sandoval  
Rep. J. Paul Taylor  
Rep. Thomas C. Taylor

**Staff**

Leslie Schaar  
Pamela Ray

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**LEGISLATIVE FINANCE COMMITTEE SUBCOMMITTEE ON CAPITAL —  
SUMMARY OF HEARINGS AND RECOMMENDATIONS**

Linda M. Kehoe, capital outlay coordinator, Legislative Finance Committee (LFC), presented LFC's executive subcommittee report on the proposed capital outlay funding plan and criteria presented by James Jimenez, secretary, Department of Finance and Administration (DFA) on behalf of the Governor's Finance Council.

The Governor's Finance Council proposed spending 50 percent of all capacity on statewide projects before allocating the remaining 50 percent in the traditional manner of one-third for the executive branch and one-third for each house. In response to this proposed spending plan, the executive subcommittee recommended:

- continuing the traditional split of all funding sources (one-third to each house and one-third to the executive branch);
- encouraging that legislators use available non-recurring general funds to fund projects with life cycles of less than 10 years;
- continuing the funding of certain projects, including higher education facilities, libraries, senior projects and water projects from general obligation bonds.

The Governor's Finance Council based its proposed funding plan on 11 criteria, and the executive subcommittee report made recommendations on each of the criteria.

Criteria #1: Establish a \$100,000 minimum level for funding projects with severance tax bonds.

- Recommendation: Establish a \$50,000 minimum level for funding projects with severance tax bonds.

Criteria #2: Set up a non-recurring general fund revenue source to fund smaller projects.

- Recommendation: This criteria has been incorporated within the recommended funding plan.

Criteria #3: The project must go through an oversight agency review process.

- Recommendation: This process will take time to develop and implement and should be considered at a later date.

Criteria #4, #5 and #6: The executive branch will request information regarding ownership, operational and life expectancy of a project.

- Recommendation: Legislators, governmental entities and constituents will be required to complete a form with this information.

Criteria #7: The project must be ready to start within six months of the date the bonds are issued.

- Recommendation: This six-month rule is in current statutes based on identical requirements in federal tax law governing the issuance of tax-exempt bonds by the state. The rule only applies after bonds have been sold. If a local entity needs more time, the bonds would not be sold in the first year.

Criteria #8: The project must be completed four years from the date the bonds are issued; all unexpended balances will revert in four years.

- Recommendation: Unless otherwise specified by legislation, five-year reversions should continue. Capital expenditures for some projects, including land acquisitions and right-of-ways generally require more time. The five-year reversion has not caused a problem in the past.

Criteria #9: Current outstanding authorizations over four years old will be given a six-month grace period for project completion and unexpended balances will revert.

- Recommendation: This criterion is fulfilled with the reversion clause and is unnecessary.

Criteria #10: Reauthorizations must be for the original project for a one-time extension only.

- Recommendation: Reauthorizations are permitted for the following purposes, but should be limited to no more than two reauthorizations for the original project:
  - for a change of purpose;
  - to extend the period of time;
  - to broaden language;

- ▶ to reauthorize balances for another project; and
- ▶ to change the administering agency.

Criteria #11: The legislature must authorize up to one percent of annual severance tax bond capacity for administration of the capital program.

- Recommendation: The legislature will authorize a general fund appropriation for the purpose of centralizing and administering the capital program.

After hearing Ms. Kehoe's presentation, committee members had numerous concerns, including whether:

- the governor has considered increasing the portion of money allocated to the legislature;
- the tracking and administration of projects should be improved before revamping the entire capital process;
- the requirement of funding "statewide projects" will eliminate projects in small and rural communities;
- the governor has considered that priorities of legislators often do not mesh with those of other governmental entities, such as local governments, school districts, the executive branch and the Navajo Nation;
- projects of two legislators may be combined to make one full appropriation and whether multiple projects may be counted in one allocation;
- the governor can assure legislators that money for statewide projects will be distributed throughout the state;
- the governor has considered who decides what constitutes a priority project;
- healthcare infrastructure in rural communities may be included in the "statewide project" funding requirement;
- implementation of the governor's proposal may be delayed one year so that the full legislature has more time to review and consider the proposal;
- unspent funds may be used for smaller projects and whether the funds for smaller projects flow solely from the general fund; and
- the governor has considered how administrative funding may be used and whether the DFA has improved its capacity to track capital by establishing a statewide process for oversight agencies to follow.

## **TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE RESOLUTION**

Mark Maryboy, chairperson, Transportation and Community Development Committee (TCDC), Navajo Nation Council, also responded to the governor's proposed changes to the capital outlay appropriation process. According to Mr. Maryboy, TCDC is concerned with the recommendation that projects must be started within six months of bond issuance. Mr. Maryboy pointed out that inclement weather at certain times of the year makes sticking to a six-month requirement nearly impossible. TCDC is also concerned that projects in the Navajo Nation are inadequately funded.

## **GOVERNOR'S FINANCE COUNCIL REPORT — CAPITAL OUTLAY PROPOSAL**

Mr. Jimenez and David Harris, executive director, New Mexico Finance Authority, both of whom are members of the Governor's Finance Council, presented the governor's proposed changes to the current procedures for allocating capital outlay appropriations. According to Mr. Jimenez and Mr. Harris, the governor is concerned that the state is spending its limited funds on small projects that are underfunded and never completed. Instead, the governor's recommendations focused on using 50 percent of all capital capacity on statewide projects, and then allocating the remaining 50 percent in the traditional manner of one-third for the executive branch and one-third for each house.

Legislators expressed concern that capital projects vital to small and rural communities would be threatened by the governor's requirement of funding "statewide projects". Legislators were also worried about the \$100,000 minimum level for projects funded by general obligation funds. Most legislators believed that problems existed in the current capital outlay appropriation process and agreed to discuss the governor's proposed changes to capital outlay procedures with their respective caucuses.

## **APPROVAL OF LIQUOR LICENSES IN INDIAN COUNTRY**

Gary Tomada, director, Alcohol and Gaming Division (AGD), Regulation and Licensing Department, outlined the liquor license application process for the committee. According to Mr. Tomada, when AGD receives an application for the issuance or transfer of a liquor license, the director first schedules a preliminary hearing and sends the posting notice to the Special Investigations Division of the Department of Public Safety. The law requires that the notice be posted for 20 days prior to AGD granting preliminary approval and that a hearing be scheduled within 30 days of receipt of an application.

Hearings may be conducted in person or by telephone. During the hearing, the hearing officer will go over a checklist with the applicant to determine deficiencies. The checklist will serve as a notice of deficient documents.

After the hearing, preliminary approval will be granted and notice will be sent to the local governing body with instructions to conduct a hearing within 45 days after receipt of a notice of preliminary approval from AGD. The local governing body is required to notify AGD of its approval or disapproval of the license within 30 days after the public hearing. If the local governing body approves the license, the director will grant final approval for the issuance or transfer of a liquor license.

Although the final decision on the issuance or transfer of a liquor license lies with the director, the New Mexico Supreme Court has limited this authority. Following are summaries of some of the court decisions:

- Notwithstanding the unconditional language of Section 60-6B-4(H), which gives a governing board the power to disapprove the issuance of a license, its decision will not be upheld in the absence of substantial evidence. City of Santa Fe vs. Woodard, 112 N.M. 449 (1996).
- The director must approve a transfer despite municipal disapproval if the governing body fails to submit substantial evidence supporting its decision or if, on its face, the governing body's decision is not based on evidence pertaining to the specific prospective transferee or location. Southland Corp. vs. Manzagol, 118 N.M. 423 (1994).
- To be probative, a lay witness' opinion must be based on actual personal knowledge of the facts supporting the opinion, and there must be a rational connection between the observations made and the opinions formed; otherwise the opinion is speculative and irrelevant. Dick vs. City of Portales, 118 N.M. 541 (1994).
- Disapproval of the issuance of a liquor license must be based on authentic facts related to the specific prospective licensee or location. In the Matter of Liquor License No. 4035, Town and County Food Stores, Inc. vs. Hughes, 118 N.M. 545 (1994).

Earl Tulley and other Tohlakai residents then told the committee about the community protests against the transfer of a liquor license to the local Mustang convenience store and gas station. According to the presenters, Giant Industries, which owns Mustang, is rethinking its decision in light of the Tohlakai community outcry. Committee members agreed that Mr. Tomada should deny the liquor license transfer and urged him to heed the concerns of Tohlakai's citizens.

#### Committee requests:

Senator Tsosie asked that staff:

- draft a letter to Gary Tomada requesting that he hold hearings in Tohlakai;
- amend current licensing legislation to define local government by including a community consensus provision; and
- research alcohol-impaired driving fatalities and get the record for the Silva case, which it should then forward to Mr. Tulley.

Senator Tsosie adjourned the meeting at 5:07 p.m.